

CLERK'S COPY.

VOL II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1933

No. 21

**WM. H. NEBLETT, VERNON BETTIN, WILLIAM
GEORGE DICKINSON AND ALFRED F. MAC-
DONALD, PETITIONERS,**

vs.

**SAMUEL L. CARPENTER, JR., INSURANCE COM-
MISSIONER OF THE STATE OF CALIFORNIA,
ET AL.**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE
OF CALIFORNIA**

PETITION FOR CERTIORARI FILED APRIL 2, 1933.

CERTIORARI GRANTED MAY 16, 1933.

BETTIN, PAINTER & WAIT,
Rives-Strong Bldg., Los Angeles, Cal.,
Attorneys for Appellants and Respondents Ver-
non Bettin and William George Dickinson.

U. S. WEBB, *Attorney General*,
State Bldg., Los Angeles, Cal.;

SHEPARD MITCHELL,
Roosevelt Bldg., Los Angeles, Cal.,
Attorneys for Respondent Samuel L. Carpenter,
Jr., Insurance Commissioner of the State of
California.

O'MELVENY, TULLER & MYERS,
Title Insurance Bldg., Los Angeles, Cal.;

OVERTON, LYMAN & PLUMB,
Roosevelt Bldg., Los Angeles, Cal.,
Attorneys for Respondent Pacific Mutual Life
Insurance Company of California, a Corpo-
ration.

HUGH K. McKEBITT,
Russ Bldg., San Francisco, Cal.,
Attorney for Respondent Charles Ross Cooper
et al.

RUPERT B. TURNBULL,
Title Insurance Bldg., Los Angeles, Cal.,
Attorney for Respondents Rupert B. Turnbull et
al., for Themselves and for Other Non-
Cancellable Policyholders Similarly Situated
and for Francis Adams for Himself and for
Other Non-Cancellable Policyholders Simi-
larly Situated.

MANIERRE & CUTHBERTSON,

Garfield Bldg., Los Angeles, Cal.,
Attorneys for Respondents *George W. Manierre*
and *B. Robert Getts* on Their Own Behalf
and on Behalf of All Similarly Situated
Policyholders.

KENYON F. LEE,

H. W. Hellman Bldg., Los Angeles, Cal.,
Attorney for Respondents *E. B. Tilton et al.*

H. S. DOTTENHEIM,

Board of Trade Bldg., Los Angeles, Cal.,
Attorney for Respondents *Marshall D. Hall* and
Joseph C. McManus on Behalf of Them-
selves and Other Holders of Non-Cancell-
able Income Policies.

NEIL S. MCCARTHY,

Associated Realty Bldg., Los Angeles, Cal.,
Attorney for Respondents *Neil S. McCarthy* on
His Own Behalf, *Ralph R. Huesman* and
Broadtown Investment Company, a Corpo-
ration.

W. B. ETHERIDGE,

First Trust Bldg., Pasadena, Cal.,
Attorney for Respondents *Dr. Arthur B. Allen*
et al.

DELVY T. WALTON,

Rowan Bldg., Los Angeles, Cal.,
Attorney for Respondents *David Lynn Open-*
shaw et al.

ALBERT E. COGER,
H. W. Hellman Bldg., Los Angeles, Cal.,
Attorney for Respondent Henry B. Senn.

HERBERT E. FRESTON,
Bank of America Bldg., Los Angeles, Cal.,
Respondent in Pro. Per.

JACOB J. LIEBERMAN,
AARON B. ROSENTHAL,
Garfield Bldg., Los Angeles, Cal.,
*Attorneys for Respondents Robert J. Webb and
Philip M. Klutznick for Themselves and All
Other Persons Similarly Situated.*

LAWLER & FELIX,
Standard Oil Bldg., Los Angeles, Cal.,
Attorneys for Respondent R. Rabinowitz.

ROSCOE R. HESS,
Rives-Strong Bldg., Los Angeles, Cal.;
DAVID R. RUBIN,
Financial Center Bldg., Los Angeles, Cal.,
Attorneys for Respondent Roscoe R. Hess.

CHAPMAN, SNIDER, DUKE & LANDIS,
HIRAM W. JOHNSON, JR.,
FRANK P. DOHERTY,
Title Insurance Bldg., Los Angeles, Cal.,
*Attorneys for Respondents G. C. Parsons, J. A.
Marvin and G. R. Snider et al., on Behalf
of Themselves and All Other Holders of
Non-Cancellable Policies, and as Members
of a Protective Committee for Holders of
Non-Cancellable Income Policies.*

REX HARDY,
Van Nuys Bldg., Los Angeles, Cal.,
*Attorney for Respondents Austin O. Martin and
Rex Hardy.*

IVAN MERRICK,
State Bldg., Olympia, Wash.,
*Attorney for Respondent William A. Sullivan,
Insurance Commissioner of the State of Wash-
ington.*

ARTHUR E. WHITE,
Roosevelt Bldg., Los Angeles, Cal.,
Respondent in Pro. Per.

OSCAR LAWLER,
Standard Oil Bldg., Los Angeles, Cal.;
HAROLD JUDSON,
Pacific Mutual Bldg., Los Angeles, Cal.,
*Attorneys for Respondents George I. Cochran
et al.*

SHATTUCK, DAVIS & STORY,
Story Bldg., Los Angeles, Cal.,
*Attorneys for Respondents William A. Beckett
et al.*

PAUL OVERTON,
James Oviatt Bldg., Los Angeles, Cal.,
Attorney for Respondent Arthur D. Wunner.

LATHAM, WATKINS & BOUCHARD,
Title Guarantee Bldg., Los Angeles, Cal.,
Attorneys for Respondents G. N. Wesley et al.

BELL, BOYD & MARSHALL,
NEWLIN & ASHBURN,

Edison Bldg., Los Angeles, Cal.,
Attorneys for Respondents Wilbur G. Katz et al.

CARL C. KATLEMAN,

Garfield Bldg., Los Angeles, Cal.,
*Attorney for Respondents Carl C. Katleman et
al., for Himself and All Others Similarly
Situated.*

ANDREW J. COPP, JR.,

Pacific Commerce Bldg., Los Angeles, Cal.,
Respondent In Pro. Per.

GARNET C. RAINEY,

Quinby Bldg., Los Angeles, Cal.,
Attorney for Respondent Ralph C. Hamlin.

CHAPMAN & CHAPMAN,

Security Title Ins. Bldg., Los Angeles, Cal.,
*Attorneys for Respondents Rowe Sanderson
et al.*

HAHN & HAHN,

Pacific Southwest Bldg., Pasadena, Cal.,
*Attorneys for Respondents Robert Casamajor
et al.*

BEN S. HUNTER,

Rowan Bldg., Los Angeles, Cal.,
Respondent In Pro. Per.

M. W. PURCELL,
Black Bldg., Los Angeles, Cal.,
*Attorney for Respondents Clara M. Garunan
et al.*

JOHN P. OLIVER,
Pacific Commerce Bldg., Los Angeles, Cal.,
Respondent In Pro. Per.

LOEB, WALKER & LOEB,
Pacific Mutual Bldg., Los Angeles, Cal.,
Attorneys for Respondents Harold S. Cook et al.

WILLIAM M. RAINS,
Citizens National Bank Bldg., Los Angeles, Cal.,
Attorney for Respondents Edwin Janss et al.

D. M. ELLISON,
Baton Rouge, Louisiana,
*Attorney for Respondent E. A. Conway, Secre-
tary of State of Louisiana.*

COSGROVE & O'NEIL,
Rowan Bldg., Los Angeles, Cal.,
*Attorneys for Respondents Carroll C. Day,
Harry C. Fabling, Joseph M. Gantz, Jack
Paschall and Ralph J. Wetzel.*

A. A. CARMICHAEL,
Montgomery, Alabama,
*Attorney for Respondents J. Parker Evans, on
Behalf of Himself and All Other Holders
of Active Life Non-Cancellable Income
Policies Issued in the State of Alabama
Who May Wish to Join With Him in the
Proceeding.*

1141 10. A. Ages attained by Grandparents?

Father's Father 45 est

Father's Mother 89

Mother's Father 50 est

Mother's Mother 76 est

- B. Have any of your grandparents suffered or died of Consumption or Apoplexy?
(Details) No.

Dated at Los Angeles Calif. this 15 day of
July 1922

1142

ANDREW JAMES COPP, JR.

Applicant's own signature in full

Witness Allen L. Winter M. D.

Medical Examiner

Form 4325B

Kindly use Black ink as this blank is to be
photographed.

Answers must be explicit and in the hand-
writing of the Examiner. Check marks or
dashes do not constitute an answer.

1143

Endorsed on back:

No. 464140

The Pacific Mutual Life Insurance Company
of California

Insured Andrew James Copp, Jr. Age 42

Amount \$10,000

Annual Premium \$347.50

Semi-Annual \$180.50

Quarter-Annual \$ 92.00

Date October 15, 1922.

1144 Notice: It is unnecessary for the Insured or the Beneficiary to employ the services of any person, firm or corporation, in collecting the insurance under this Policy, or in receiving any of its benefits, Time and expense will be saved by writing direct to the Home Office or to the General Agency where premium payments have been made.

Non-Participating, 20 Payment Life. Premiums Payable for 20 years, or Until Prior Death.

1145 Permanent Total Disability Benefit.

Form 5172. 1-21.

"Accident and Sickness Benefits" Policy

This policy provides benefits for loss of life, limbs, sight and time resulting from bodily injury sustained through accidental means; and from loss of time from sickness; to the extent herein provided.

The Pacific Mutual Life Insurance Company of California (herein called Company)

146

in consideration of the payment of Eighteen and 76/100 Dollars premium, (the premium for a term of twelve months being \$75.00) HEREBY INSURES Andrew James Copp, Jr. (herein called Insured), a resident of Place Los Angeles County Los Angeles State California for the term of three months commencing at 12 o'clock noon, Standard time at the place where this policy is countersigned, on the 15th day of July 1922,

1147 by occupation a Attorney-at-Law classified A
by the Company, AGAINST

(1) Loss of life, limbs or sight, as hereinafter set forth, resulting directly and independently of all other causes, from bodily injuries effected through external, violent and accidental means;

(2) Disability as hereinafter set forth, resulting directly and independently of all other causes, from bodily injuries effected through external, violent and accidental means;

1148 (3) Disability as hereinafter set forth, resulting directly and independently from all other causes, from sickness, which sickness is contracted and begins after the date hereof;

Subject to all provisions and limitations herein contained, as follows:

Accident Benefits

1149 Accidental Loss of Life, Limbs and Sight (a) Ten Thousand Dollars will be paid in one sum should loss of life, loss of both hands, loss of both feet, loss of one hand and one foot, or loss of the sight of both eyes, so accidentally caused, result within ninety days from date of the accident. Loss shall mean with regard to hands and feet, amputation of both entire hands at or above the wrist, amputation of both entire feet at or above the ankle, or amputation of one entire hand at or above the wrist and one entire foot at or above the ankle; with regard to eyes, irrecoverable loss of entire sight of both eyes.

1150 Total Dis- (b) Two Hundred Dollars per
ability month will be paid while disability
so accidentally caused, consists of
continuous total loss of business time and such
disability immediately follows the accident, here-
in called total disability.

Partial Dis- (c) One Hundred Dollars per
ability month will be paid while disability
so accidentally caused, is not total but
consists of continuous inability to prosecute im-

1151 portant daily business duties, from either the
time of accident or the termination of such total
disability.

Liability under clause "c" is limited to six
months, and under clause "b" and "c" together,
to twelve months.

Sickness Benefits

House Con- (d) Two Hundred Dollars per
finement month will be paid while disability
so caused by sickness, consists of
1152 continuous confinement inside the house accom-
panied by regular visits by a legally qualified
physician.

Convales- (e) One Hundred Dollars per
ence month will be paid in case of valid
claim under clause "D", while dis-
ability so caused by sickness continues after ter-
mination of such confinement and consists of
inability to transact any and every kind of busi-

1153 ness, and requires the Insured to be under the care of a legally qualified physician.

Liability under clause "e" is limited to six months, and under clauses "d" and "e" together, to twelve months.

Standard Provisions

Change of
Occupation

1. This policy includes the endorsements and attached papers, if any, and contains the entire contract

1154 of insurance except as it may be modified by the Company's classification of risks and premium rates in the event that the Insured is injured or contracts sickness after having changed his occupation to one classified by the Company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the Company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate within the limits so fixed by the Company for such more hazardous occupation.

1155

If the law of the state in which the Insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the pre-

1156 ~~miunt~~ rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the Company in accordance with such law, but if such filing is not required by such law then they shall mean the Company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the Company is liable.

1157 Changes in Policy 2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed hereon.

1158 Reinstatement of Policy 3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the Company or by any of its duly authorized agents shall reinstate the policy but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

1159 Time Notice 4. Written notice of injury or of Claim of sickness on which claim may be based must be given to the Company within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness. In event of accidental death immediate notice thereof must be given to the Company.

1160 Sufficiency of Notice 5. Such notice given by or in behalf of the Insured or beneficiary, as the case may be, to the Company at its Home Office, 501 West Sixth Street, in the city of Los Angeles, California or to any authorized agent of the Company, with particulars sufficient to identify the Insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

1161

Form A 194-U

Forms for Proof of Loss 6. The Company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with

1162 the requirements of this policy as to proof of loss upon submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

Proof of 7. Affirmative proof of loss must
Loss be furnished to the Company at its
 said office in case of claim for loss

1163 of time from disability within ninety days after the termination of the period for which the Company is liable, and in case of claim for any other loss, within ninety days after the date of such loss.

Medical 8. The Company shall have the
Examination right and opportunity to exam-
 ine the person of the Insured

1164 when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death, where it is not forbidden by law.

Immediate 9. All indemnities provided in
Payment of this policy for loss other than that
Indemnities of time on account of disability
 will be paid immediately after re-
 ceipt of due proof.

1165 Monthly Indemnity Payable in Installments 10. Upon request of the Insured and subject to due proof of loss all of the accrued indemnity for loss of time on account of disability will be paid at the expiration of each month during the continuance of the period for which the Company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

1166 To Whom Indemnities Payable 11. Indemnity for loss of life of the Insured is payable to the beneficiary if surviving the Insured, and otherwise to the estate of the Insured. All other indemnities of this policy are payable to the Insured.

Less Hazardous Occupation 12. If the Insured shall at any time change his occupation to one classified by the Company as less hazardous than that

1167 stated in the policy, the Company, upon written request of the Insured and surrender of the policy, will cancel the same and will return to the Insured the unearned premium.

Rights of the Beneficiary 13. Consent of the Beneficiary shall not be requisite to surrender or assignment of this policy, or to change of beneficiary or to any other changes in the policy.

1168 Limitation of Time for Bringing Suit 14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

1169 Limitations Controlled By Statute 15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the Insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

1170 Cancellation by Company 16. The Company may cancel this policy at any time by written notice delivered to the Insured or mailed to his last address, as shown by the records of the Company, together with cash or the Company's check for the unearned portion of the premiums actually paid by the Insured, and such cancellation shall be without prejudice to any claim originating prior thereto.

1171 Age Limits 20. The insurance under this
of Policy policy shall not cover any person
under the age of sixteen years
nor over the age of sixty years. Any premium
paid to the Company for any period not covered
by this policy will be returned upon request.

Additional Provisions

Exceptions 21. Accident Benefits cover
freezing and unprovoked assaults
(including assaults of burglars and robbers), but
1172 neither Accident nor Sickness Benefits cover loss
or disability resulting directly or indirectly, in
whole or in part from, pregnancy; suicide, sane
or insane, or any attempt thereat, sane or in-
sane; any disease of the generative organs any
bodily injury, fatal or non-fatal, sustained, or
sickness contracted by the Insured while in or
on any vehicle or mechanical device for aerial
navigation, or in falling therefrom or therewith,
or while operating or handling any such vehicle
1173 or device; bodily injury or sickness caused di-
rectly or indirectly by war or by any act of war,
or any injury happening or any sickness con-
tracted while the Insured is engaged in military
or naval service in time of war; bodily injury
sustained or sickness contracted or suffered while
the Insured is outside Continental United States
of America (not including Alaska or the Pana-
ma Canal Zone) or Canada. Accident Benefits
do not cover death or disability caused or con-
tributed to, directly or indirectly, wholly or

1174 partly by ptomaines or bacterial infection (except Pyogenic infection which shall occur simultaneously with and through an accidental cut or wound).

Accident and Sickness Non-Participating 22. This "Accident and Sickness Benefits" policy and the premium charged therefor shall not share in the surplus earnings of the Company.

1175 Occurrence of Loss 23. Upon the occurrence of any one of the losses described in clause "a", all insurance hereunder except as respects such loss shall immediately cease, and upon payment of the benefit for such loss payable hereunder, this policy shall be surrendered to the Company. Any failure to comply with the provisions of this policy shall render invalid any claim under this policy.

1176 Cancellation by Insured 24. This policy may be cancelled at any time by the Insured filing this policy for cancellation, together with written notice, at the Home Office of the Company at Los Angeles, but such cancellation shall be without prejudice to any claim originating prior thereto.

Beneficiary 25. Indemnity for loss of life of the Insured is payable to Cora Lord Copp, Wife of the Insured, or in the event that she shall die before the Insured, to Andrew James Copp, III, and Jane Pendexter Copp,

- 1177 Children of the Insured, equally or to the survivor, Beneficiary. No assignment of interest under this policy and no change of beneficiary shall bind the Company unless consent thereto, duly signed by an executive officer of the Company is formally endorsed hereon. The Company shall not be responsible for the validity of any assignment or change of beneficiary. No provision of the charter, constitution or by-laws of the Company not included herein shall avoid
- 1178 the policy or be used in evidence in any legal proceeding hereunder.

Days of 26. A grace of thirty-one days
Grace shall be granted for the payment of every premium renewing this policy.

- In Witness Whereof, The Pacific Mutual Life Insurance Company Of California has, by its proper officers, signed this Contract at the City of Los Angeles, but the policy shall not be binding upon the Company until countersigned by a
- 1179 a duly authorized Agent or Manager of the Company.

Examined F. E.

J. E. MILLER

GEORGE J. COCHRAN

Assistant Secretary

President

Countersigned at Los Angeles Calif. 7/21/22
as of the day and year first written above.

No. 464140

J. N. RUSSELL

Authorized Agent or Manager

WL

1180 **NON-CANCELLABLE INCOME POLICY**

This policy provides indemnity for loss of time through accidental means, and for loss of time by sickness; to the extent herein provided.

Founded 1868

The Pacific Mutual Life Insurance Company
of California

(herein called company)

1181 Hereby Insures Andrew James Copp, Jr. (herein called Insured and described in the Application), subject to all provisions and limitations herein contained:

Against disability commencing while this policy is in force and resulting from bodily injury effected through accidental means; and against disability commencing while this policy is in force and resulting from sickness; such disability, in both cases, to be such as will result in continuous, necessary and total loss of all business time; as
1182 follows:

Disability

Part A. The Company will pay indemnity at the rate of Three Hundred Dollars per month during the continuance of disability as defined above, provided, however, that no indemnity shall be paid under this Part A or under Parts B, C or D, for the first* three months of any period of disability.

1183 Loss of Both Hands, Both Feet, Hand and Foot
or the Sight of Both Eyes

- Part B. Should the Insured suffer, as a direct result of such injury or such sickness, the loss of both entire hands by complete severance at or above the wrists, or the loss of both entire feet by complete severance at or above the ankles, or the loss of one entire hand by complete severance at or above the wrist and one entire foot by complete severance at or above the ankle, or the irre-
- 1184 coverable loss of the entire sight of both eyes, he shall be deemed to have sustained a permanent disability resulting in continuous, necessary and total loss of all his business time and the Company will pay indemnity at the rate per month specified in Part A as long as he shall live, or;

Loss of One Hand or One Foot

- Part C. Should the Insured suffer, as the direct result of such injury or such sickness, the loss of one entire hand by complete severance at or above the wrist, or the loss of one entire foot by complete severance at or above the ankle, the
- 1185 Company will pay indemnity at the rate per month specified in Part A for the period during which such loss causes disability as defined above, and at the termination of such disability will consider such loss to have caused a permanent disability of 25%, and will pay the Insured, as long as he shall live, monthly indemnity at the rate of 25% of the amount specified in Part A, or;

1186 Loss of the Sight of One Eye

Part D. Should the Insured suffer, as the direct result of such injury or such sickness, the irrecoverable loss of the entire sight of one eye, the Company will pay indemnity at the rate per month specified in Part A for the period during which such loss causes disability as defined above, and at the termination of such disability will consider such loss to have caused a permanent disability of 10%, and will pay the Insured, as long
1187 as he shall live, monthly indemnity at the rate of 10% of the amount specified in Part A.

*No indemnity is payable under this policy for the specified first part of any period of disability.

Form A 292—Renewable *Thourgh* Age 60

Standard Provisions

1. This policy includes the endorsements and attached papers, if any, and contains the entire
1188 contract of insurance except as it may be modified by the Company's classification of risks and premium rates in the event that the Insured is injured or contracts sickness after having changed his occupation to one classified by the Company as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the Com-

1189 pany will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the Company for such more hazardous occupation.

If the law of the state in which the Insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks mentioned in this policy shall mean only such as have been last filed by the Company in accordance with such law, but if such filing is not required by such law then they shall mean the Company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the Company is liable.

1191 2. No statement made by the applicant for insurance not included herein shall avoid this policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed hereon.

3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the Company or by

1192 any of its duly authorized agents shall reinstate the policy but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

4. Written notice of injury or of sickness on which claim may be based must be given to the Company within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from
1193 such sickness.

5. Such notice given by or in behalf of the Insured or beneficiary, as the case may be, to the Company at its Home Office, 501 West Sixth Street, in the City of Los Angeles, California, or to any authorized agent of the Company, with particulars sufficient to identify the Insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall
1194 be shown not to have been reasonably possible to give such notice and that notice was given as soon as was reasonably possible.

6. The Company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon

1195 submitting within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, character and extent of the loss for which claim is made.

7. Affirmative proof of loss must be furnished to the Company at its said office within ninety days after the termination of the period of disability for which the Company is liable.

1196 8. The Company shall have the right and opportunity to examine the person of the Insured when and so often as it may reasonably require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

1197 10. Upon request of the Insured and subject to due proof of loss all of the accrued indemnity for loss of time on account of disability will be paid at the expiration of each month during the continuance of the period for which the Company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. All the indemnities of this policy are payable to the Insured.

12. If the Insured shall at any time change his occupation to one classified by the Company as less hazardous than that stated in the policy, the Company, upon written request of the Insured and surrender of the policy, will cancel the same and will return to the Insured the unearned premium.

1198 14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

1199 15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the Insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

1200 17. If the Insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the Company, then in that case the Company shall be liable only for such portion of the Indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

18. Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

19. If a like policy or policies, previously issued by the Company to the Insured be in force

1201 concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of \$250.00 weekly, the excess insurance shall be void and all premiums paid for such excess shall be returned to the Insured.

20. The insurance under this policy shall not cover any person under the age of eighteen years nor over the age of sixty years. Any premium paid to the Company for any period not covered by this policy will be returned upon request.

1202

Additional Provisions

1203 — 21. This insurance does not cover, (1) any disability for which the Insured is not necessarily and regularly attended by a legally qualified physician other than the Insured; provided, however, that this requirement shall be waived in the event such attendance is declared by medical authority satisfactory to the Company to be unnecessary; (2) women; (3) disability resulting wholly or partly, directly or indirectly from (a) bodily injury sustained or sickness contracted while the Insured is engaged in military or naval service in time of war; (b) bodily injury or sickness caused by war or any act of war; (c) bodily injury sustained, or sickness contracted by the Insured while in or on any vehicle or mechanical device for aerial navigation, or in falling therefrom or therewith, or while operating or handling any such vehicle or device; (d) bodily injury sustained or sickness contracted

1204 except while the Insured is within Canada or Europe or the United States (not including Alaska, Panama Canal Zone or the insular possessions of the United States), or while traveling between them by regular lines of passenger conveyance (not including aerial conveyance).

22. No recovery shall be had on account of disability from sickness for any period of time for which the Insured is entitled to indemnity for bodily injury under any policy in this Company, except in the event of payment of claim for indemnity on a percentage basis as provided in Parts C or D, but in no event shall indemnity be payable under this policy at a rate per month in excess of that specified in Part A. Failure to comply with any of the provisions of this policy shall render invalid any claim under this policy.

23. After the first twelve months of disability, no indemnity shall be payable for any period of disability during which the Insured is not continuously within the United States (not including Alaska, the Panama Canal Zone or the insular possessions of the United States) unless a written permit to reside elsewhere be granted by the Company.

24. The insurance under this policy does not cover the Insured after he passes the age of sixty years, but until that time he shall have the right to renew this policy from year to year by the payment of the premium as herein pro-

1207 vided. All premiums are due and payable on or before the anniversary date of this policy either at the Home Office of the Company in the City of Los Angeles or to any authorized agent of the Company, but a grace of thirty-one days shall be granted for the payment of every premium after the first, during which time the insurance hereunder shall continue in force. No premium receipt is valid unless signed by the President or a Vice President or the Secretary or an Assistant Secretary of the Company.

1208 After any default in payment of premium this policy may be reinstated as provided in Standard Provision Number 3 at any time within six months from the date of such default on written application by the Insured to the Home Office of the Company and the payment of the defaulted premium, provided the Insured shall, with such application, submit evidence of insurability satisfactory to the Company.

1209 25. Indemnity for disability will not be paid under this policy at a rate in excess of the average earnings of the Insured for the period of time that he has been actually employed during the two years immediately preceding the commencement of the disability for which the Company is liable, and all premium paid during said two years for that portion of the disability indemnity in excess of the amount of such earnings will be returned upon request of the Insured. The Insured shall have the right to reduce all or any of the indemnities of this policy

1210 on any anniversary of the date hereof and upon his request and temporary surrender of the policy for endorsement, the Company will endorse it, making such reduction of indemnities and a proportionate reduction in premium.

26. At any time during the life of this policy, if the Insured changes his occupation to one different from that stated in this policy, the Company hereby agrees upon the surrender of this policy to issue in lieu thereof upon the written request of the Insured, a new policy containing the same provisions as this policy except a change in the amount of the benefits payable, the new policy to provide such an amount payable for disability as the premium paid for this policy will purchase at the rates but within the limits fixed by the Company for such different occupation.

1211

If the age of the Insured has been mis-stated, any amount payable under this policy shall be that amount which the premium paid would have purchased at the rate fixed by the Company for the Insured's correct age.

1212

27. The Insured is by occupation an Attorney-at-Law classified Preferred by the Company.

No assignment of interest under this policy shall bind the Company unless consent thereto, duly signed by an executive officer of the Company, is formally endorsed hereon. The Company shall not be responsible for the validity of any assignment.

1213 28. This insurance is effective in consideration of the payment in advance of the premium of Eighty-seven Dollars and of the payment of a like premium on the Twenty-sixth day of July in each year during the continuance of this Policy, and in further consideration of the statements made in the application for this policy, copy of which application is endorsed hereon or attached hereto, and is hereby made a part of this Policy. The falsity of any statement in the application, 1214 materially affecting either the acceptance of the risk of the hazard assumed hereunder, or made with intent to deceive shall bar all right to recovery under this policy. No provision of the charter, constitution or by-laws of the Company not herein set forth shall be used in defense of any claim arising under this policy.

In Witness Whereof, the Company has, by its proper officers, signed this Contract in the City of Los Angeles and caused same to be counter- 1215 signed by its authorized Agent or Manager, as of the Twenty-sixth day of July, 1922.

Examined SB

George J. Cochran

President

S. F. McClung

Secretary

Countersigned The Paschall-Jones Company

By Jack Paschall

Authorized Agent or Manager

M. A. Y.

1216 Attached thereto:

Application for Insurance—Accident
Department

The Pacific Mutual Life Insurance Company of
California

I hereby apply for Non-Cancellable Income
Insurance, to be based on the following repre-
sentations and the answers that I shall make to
the Company's Medical Examiner in continuation
of this application.

1217

Kindly use Black ink as this blank is to be
photographed.

1. What is your full name? (Please print)
Andrew James Copp, Jr.

2. Where do you reside? No. 314 S. Union
Ave. Street Town Los Angeles State Calif.

3. Where and when were you born, and
what is your age? Town Millerton State or
Country New York Month Oct. Day 15" Year

1218 1880 Age 42 Years.

4. What is your occupation? (Describe
fully) Lawyer

5. What are the duties required of you?
(Describe fully, stating kind of goods) Usual
duties.

6. What is the name of your employer?
Self

7. What is the nature of your employer's
business?

1219 8. What is the location of your employer's place of business? No. 412 Copp Building Street Town Los Angeles State Calif.

9. Whom do you designate as beneficiary under policy applied for, and what relationship is such beneficiary to you? (Please print) If for Disability Benefits only, write "None" Relationship None

10. Does the disability indemnity applied for in this and other companies or associations together with other insurance now held by you exceed your average monthly earnings? No.

11. Are your habits of life correct and temperate? Yes

12. (a) Have you any insurance against accidents or sickness in other companies or associations? (Name company, amount and disability indemnity). Ocean, \$25 a week accident and sickness, will expire Oct. 13.

1221 12 (b) Have you any life, accident or sickness insurance in this Company? (Give numbers and amounts) \$10,000 Life with \$200 monthly disability benefits now pending.

12 (c) Have you any Company life insurance in other U. S. Government companies or associations? Travelers

Amount	Plan of Insurance	Year Taken
\$10,000.	Term	1918
5,000.	20-payment Life	1917

13. Have you ever made application for life, accident or sickness insurance upon which you

1222 have not been notified of the action taken, or has any application ever made by you for life, accident or sickness insurance been declined or postponed, or has any policy of accident or sickness insurance issued to you been cancelled or renewal refused by this or any other company or association? (Give particulars) no.

14. Have you ever received or been refused compensation for accidental injuries or sickness, or have you any claim now pending? (Give particulars) Dec. 1912, bruised shoulder, 1 week \$25. 1916—deep cut on finger, 1 week \$25.

15. Have you ever had or have you now any bodily or mental infirmity or deformity (including hernia and rupture), or have you impaired hearing, any disease of either eye, lost a limb or the sight of an eye, or are you in any respect maimed or in unsound condition mentally or physically? (Give particulars) No.

1224 16. Have you in contemplation—any hazardous undertaking—any special journey—or any traveling outside the United States? (Give particulars) No.

17. Do you agree that the falsity of any answer in this application for insurance or any answer made to the Company's Medical Examiner in continuance of this application for insurance shall bar the right to recover thereunder if such answer is made with intent to deceive or materially affects either the acceptance of the

1225 risk or the hazard assumed by the Company?
Yes.

18. Do you agree that if entire amount of annual premium for the insurance applied for is not paid in cash at time of making this application, there shall be no liability on the part of the Company under this application unless nor until a policy is issued and delivered to you and entire amount of such annual premium actually paid in cash during your lifetime and while you are
1226 in good health and free from injury, and do you further agree that if entire amount of such annual premium is paid in cash to the Company's agent at time of making this application, insurance (subject to the provisions of the Company's regular policy of the form applied for) shall be effective from date of medical examination for said insurance, provided the Company in its judgment shall be satisfied as to your insurability under form of policy applied for, on date
1227 of such examination, and do you further agree that if the Company shall not be so satisfied, entire amount of premium paid, without interest, shall be returned? Yes.

Dated at Los Angeles this 15th day of July 1922.

Signed in the presence of Maude Ross Ferguson
Soliciting Agent

ANDREW JAMES GOPP, JR.

Applicant's own signature in full

- 1228 Statement to be signed by applicant for cash paid to agent No. 133934 I Hereby Declare that I have paid to Agent of The Pacific Mutual Life Insurance Company of California Dollars in cash, and that I hold his receipt for same, written on receipt form detached from and corresponding in date and number with this application.

ANDREW JAMES COPP, JR.

Applicant's own signature in full

1229 Date 19

Receipt Detached

At Home Office.

Form A-1442-W

Kindly use Black ink as this blank is to be photographed.

Answers must be explicit and in the handwriting of the Examiner. Check marks or dashes do not constitute an answer.

1230 Questions To Be Asked By The Medical Examiner

(This examination must be made in private by a regularly appointed Medical Examiner, no Agent or other third person being present)

In continuation of and forming a part of my Application for Insurance to The Pacific Mutual Life Insurance Company of California.

1. A. Where have you resided during summer and winter of last ten years? A Calif.

464140

1231 B. Have you ever changed or been advised to change your occupation or residence to benefit your health? B No

2. A. How much of each of the following alcoholic beverages do you use daily? A Spirituous None beer None Wine None.

B. Have you ever used them to excess? (Give particulars.) B No

C. Have you ever used opium, cocaine or any other drug? C No

1232 D. Have you ever taken treatment for liquor or drug habit? If so, when and where? D No

E. If a total abstainer, how long so? E Always

F. Have you ever engaged in the manufacture or sale of wines, spirits, or malt liquors? When and how long? F No

3. A. Has any one in your family committed suicide or suffered from Cancer, Epilepsy or Insanity? (Details each such case.)

1233 A Brother dec'd Traumatic Insanity Worcester State Institution Mass.

B. Has any one in your family or in your immediate household ever suffered or died of Consumption or any other contagious disease? (Details each such case.) B No

4. A. Has any Insurance or Assessment Company or Fraternal Society ever refused you Insurance, or limited or postponed your

1234 Application? (Details each such case.)
A No

B. Have you ever applied for Insurance without getting the Policy, or have you any other Application now pending? B. No.

C. Have you ever applied for a pension or Government Compensation? If so, give the cause for each such claim. C. No

5. Have you ever had or been treated for: Yes or No Give name.

1235	treated for:	No	name,
	A. Apoplexy, Paralysis, Epilepsy,		history,
	Dizziness, Mental Derange-		date and
	ment?	No	duration

B. Asthma, Shortness of Breath, Chronic Cough, Spitting of Blood?	No	or	of each disease
---	----	----	--------------------

C. Influenza, Pneumonia, Pleurisy; Symptom.
Bronchitis, Tuberculosis? No

1236	D. Disease of Heart or. Blood Vessels, Sunstroke, Nervous Prostration?	No
------	--	----

E. Gastric or Duodenal Ulcer,
Indigestion, Appendicitis,
Piles, Fistula? No

F. Liver, Kidney or Bladder Disease, Sugar or Albumin in Urin?	No
--	----

1237 G. Colic, Gravel, Gall Stones,
Jaundice, Malarial or other
Fevers? No

H. Cancer, Tumor, Open Sores,
Goitre, Enlarged Glands, Skin
Disease? No

I. Locomotor Ataxia, Lumbago,
Gout, Rheumatism, Syphilis? No

1238 J. Difficulty with Sight or Hear-
ing, Discharge from the ear? No

K. Have you ever had a surgical
operation? No

L. Have you given full informa-
tion about each disease or
sympton mentioned above
which you have ever had or
been treated for? Yes

1239 6. Have you had any injuries or illnesses or
consulted or been treated by any physician or
practitioner during last seven years? No.
Give particulars each illness. Injury, Con-
sultation and Treatment Date Duration
Result Physician's Name and Address

7. Have your weight in the past year
(Increased? No How much? None lbs.
(Diminished? No

8. Are you now in good health? Yes.

9. Family Record?

1240

	Age if living	State of health; if not good give full details
Father	76	good
Mother	68	good
Bt Number		
rh Living (2)	36)	
oe	40)	good
-r Number		
s Dead (1)		

1241

Age at Death	Cause of Death; give full details	Date of Death	How Long sick
27	est Phenmonia	1906	A few days
St Number			
ie Living (0)			
sr Number			
-s Dead (1)			

Age at Death	Cause of Death; give full details	Date of Death	How Long sick
10	Diphtheria	1896	4 days

1242

10. A. Ages attained by Grandparents? Father's
Father 45 est Father's Mother 89
Mother's Father 50 est Mother's Mother
76 est.

B. Have any of your grandparents suffered
or died of Consumption or apoplexy?
(Details) No.

Dated at Los Angeles, Calif. this 15 day of
July 1922

ANDREW JAMES COPP, JR.
Applicant's own signature in full

Witness Allen L. Winter M.D.
Medical Examiner

Form 4325B

1243 Passenger Air Travel Amendment No. 5129131

**The Pacific Mutual Life Insurance Company of
California**

Accident Department

1244 Indemnity as provided by this policy will be paid to the extent of the minimum amount provided in the policy for any loss specified therein resulting from bodily injury sustained while the Insured is riding as a fare-paying passenger in a licensed commercial air craft provided by an incorporated common carrier for passenger service, and while such air craft is operated by a licensed transport pilot and is flying in a regular civil air way between definitely established air ports.

1245 Except as above provided nothing herein contained shall be construed as changing, altering or amending any aeronautical or aviation exclusion clause which may be contained in the policy or any other condition or provision of the policy. Nothing herein contained shall be construed as entitling the Insured to recover under the Double Indemnity feature, if any, of the policy.

Not valid unless countersigned by a duly authorized Agent or Manager and attached to and made part of Accident or Disability Policy bearing No. 4633015 issued to Mr. Andrew James Copp, Jr.

S. J. McClung
Secretary

George J. Cochran
President

1246 Countersigned and dated at Los Angeles this
10th day of September 1928

Pascall-Jones Company

By Jack Paschall

Authorized Agent or Manager

Form A2243 5127001,—5129500

On back:

No. 4633015

1247

The Pacific Mutual
Life Insurance Company

of California

Non-Cancellable

Income Policy

Form A 292

Renewable through age sixty

Issued To

Andrew James Copp, Jr.

This policy provides indemnity for loss of
time through accidental means, and for loss of
time by sickness; to the extent herein provided.

1248 No indemnity is payable under this policy for
the first part specified herein of any period of
disability.

Please read your policy

The Pascall-Jones Co.

General Agents

Jack Paschall, Manager

Accident and Health Insurance

Ninth Floor W. P. Story Bldg.

Phone Pico 1626

1249 State of California, County of Los Angeles—ss.

Andrew J. Copp, Jr. being by me first duly sworn, deposes and says: that he is the Intervenor in the above entitled action; that he has read the foregoing complaint in intervention and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he
1250 believes it to be true.

Andrew J. Copp, Jr.

Subscribed and sworn to before me this 12th day of August, 1936.

[Seal]

L. E. LAMPTON,
County Clerk

A. G. STANHAM,
Deputy Clerk

1251 Endorsed: Received copy of the within petition this 12th day of Aug., 1936, U. S. Webb, Attorney General; by John L. Flynn, deputy, attorney for petitioner. Received copy of the within complaint this 12th day of August, 1936. O'Melveny, Tuller & Myers, by Homer I. Mitchell, attorneys for Pac. Mutual Life Ins. Co.

Filed Aug. 12, 1936, 11:00 a. m. L. E. Lampton, county clerk; by R. J. Curtis, deputy.

1252 [TITLE OF COURT AND CAUSE.]

Complaint in Intervention to Set Aside and Vacate All Orders of the Court Made Herein Upon the Petition of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, The Pacific Mutual Life Insurance Company of California, a Corporation, and the Pacific Mutual Life Insurance Company.)

1253 Comes now Neil S. McCarthy and by leave of Court files this his complaint in intervention herein and for cause of action and intervention alleges:

I.

That at all times herein mentioned, the intervenor was and is the owner and holder of policy numbered 4641696 issued by the respondent, the Pacific Mutual Life Insurance Company of California, a corporation.

1254

II.

That at all times the Pacific Mutual Life Insurance Company of California was and is a corporation organized under the laws of the State of California and has had and still has its principal place of business in the City of Los Angeles, County of Los Angeles, California. That, for the purpose of brevity, said corporation is hereinafter referred to as the "old company".

1255

III.

That at all times herein mentioned, Pacific Mutual Life Insurance Company was and is a corporation incorporated under the laws of the State of California with its principal place of business in Los Angeles, County of Los Angeles, California, and, for the purpose of brevity, this corporation is referred to as the "new company".

IV.

1256

That Samuel L. Carpenter, Jr. is the duly appointed, qualified and acting Insurance Commissioner of the State of California.

V.

1257

That on or about July 22, 1936, the Insurance Commissioner of the State of California filed in this Court an application for an order appointing him Conservator of said old company and thereafter on the same day, an order of said Court was made and entered, under and by virtue of the terms of which said petitioner was appointed Conservator of said old company and of its business, assets and affairs and that said petitioner was ordered to take possession forthwith of all books, records, property and assets of said old company and as Conservator to conduct its business for the benefit of its policyholders, creditors and stockholders and of the public in general.

That on said July 22, 1936, an application for an order to liquidate was filed and on said

1258 same day an order of court was made and entered, under and by the terms of which said Commissioner was appointed Liquidator of the assets and business of said old company, and of all the right, title and interest of said old company in and to its assets and property was vested and confirmed in said petitioner as Liquidator and said petitioner as Liquidator was ordered to conduct, manage and operate the business of said old company, to wind up and liquidate its

1259 business and to formulate, prepare and submit forthwith, if possible, for the approval of said court, a plan and agreement of reinsurance and rehabilitation or sale and transfer of said assets.

On said same day, a petition was filed asking for an order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of said old company and thereafter and on the same day an order of said court was made and entered approving

1260 ing said proposed plan and agreement, ordering said Commissioner forthwith to organize a new company and to subscribe to its capital stock by the use of funds and assets under his control as Liquidator of said old company, authorizing him forthwith to execute an agreement in form substantially as set forth in said plan, ordering said Commissioner to forthwith transfer and set over to said new company all of the assets of the old company except the stock of said new com-

1261 pany and except any claims which the company might have against any of its present or past officers, directors or employees or against any other person by reason of wrongful or illegal acts or omissions of any such present or past officers, directors or employees, authorizing and ordering said Commissioner to do any and all things necessary, desirable or proper to carry out the terms of said plan and agreement and directing the officers, agents and employees of the old company to cooperate with said Commissioner and the new company in closing of said plan by the execution of such documents and doing of such acts as might be requested by said Commissioner.

That on said day a petition for the approval of an amendment to said plan was filed and granted and an order made approving said amendment, whereupon the assets of the old company, with the exception above referred to, were transferred and conveyed to the new company and that said new company has been and now is in the sole and exclusive possession of the same and has been and now is conducting a business of insurance heretofore conducted by the old company.

VI.

That, no notice of any of said matters was given to this intervenor and there was no impartial or independent appraisal or investigation into the affairs made by the court previous to the making of said order.

1264

VII.

That intervenor is informed and believes that the old company was not insolvent and alleges that said sale and transfer is not for the best interests of all concerned, and alleges on information and belief that a much better sale can be made even if the old company is distressed financially; that said plan is unfair and inequitable, is in disregard of the rights of the intervenor, would jeopardize the holdings of assets by the new company as security for the payment of the non-cancellable policy of intervenor; that Article XIV, Chapter 1, Part 2 of the Insurance Code is void and that it permits and authorizes proceedings that deprive the intervenor of his property without due process of law.

VIII.

1266

That all of the orders heretofore made in this cause are against the best interests of said old company, its policyholders and particularly holders of non-cancellable policies, such as intervenor. Intervenor alleges upon information and belief that said rehabilitation, sale and transfer plan of said old company with said new company is not the best practice plan for the protection of the policyholders of the old company as was represented by petitioner in his said application for

1267 said sale, but intervenor alleges upon information and belief that it is for the special benefit of certain stockholders of the old company and not for the interests of the policyholders of the same. Intervenor alleges that under said plan the protection and value of his policy of insurance, together with that of all other policies of insurance issued by the old company and particularly of the class of that to which intervenor
1268 belongs, will be greatly lessened and impaired. That intervenor alleges, upon information and belief, that, if said sale and transfer of said assets from said old company to said new company be set aside and the orders heretofore made vacated and annulled that, upon proper and timely notice, the assets of said old company may be sold to interested parties without any loss of any of the rights of any of the stockholders
1269 herein interested. Intervenor alleges upon information and belief that, if this matter be fully advertised and the assets placed on sale to the highest and best bidder, the interest of intervenor and other policyholders similarly situated will be more fully and adequately protected.

IX.

That the orders and decrees herein referred to above are of no force or effect for the reason

1270 that no notice of said hearing of motions for said orders were had or given, as required by Section 1016 of the Insurance Code of the State of California. Intervenor alleges upon information and belief that said orders were all signed ex parte and without notice to policyholders, in direct violation of said Section 1016 of said Insurance Code.

X.

1271 Intervenor further alleges upon information and belief that said old company has not been and is not insolvent within the terms and provisions of the Insurance Code of California, that the orders, judgments and decrees herein referred to above entered on behalf and at the request of the said Commissioner are unlawful and void and of no force and effect for the reason that each of them was and is a violation of intervenor's rights under the following provisions of the Constitution of the State of California:

1272

Sections 7, 11, 13, 16, 21, 22 of Article I;

Section 1 of Article III; and

Section 1 of Article XII.

That the orders, judgments and decrees herein referred to are void and of no force and effect for the reason that each of them was and is in

1273 conflict with Section 1 of the 14th amendment to
the Constitution of the United States.

XI.

That the policy held by intervenor is a non-cancellable income policy and has been issued and in force since September 8, 1923 and that each and every of the annual premiums thereon have been paid from that time until the present time.

1274 Wherefore, intervenor prays judgment as follows: That the Court may make its orders vacating and setting aside all orders of the Court hereinbefore made herein upon the petition of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, the Pacific Mutual Life Insurance Company of California, a corporation, and the Pacific Mutual Life Insurance Company, a corporation; that said petitioner take nothing by his application for rehabilitation and sale of the assets of said corporation known as the old company; and for an order setting aside and vacating the order permitting, authorizing and approving a sale and transfer of the assets of said old company and setting aside the order approving the reinsurance plan of said old company, and for an order setting aside all other orders of whatsoever kind or nature made to date in and about said plan of

1275

MICROCARD

TRADE MARK



22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

211

38-69



1276 reinsurance, liquidation and conservation of the assets of said old company; and for such other and further orders as to this court may seem just and equitable in the premises.

LEROY ANDERSON,

NEIL S. MCCARTHY,

Attorney for intervenor, Neil S. McCarthy.

State of California, County of Los Angeles—ss.

1277 Neil S. McCarthy being by me first duly sworn, deposes and says: that he is the intervenor in the above entitled action; that he has read the foregoing complaint in intervention and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

1278

NEIL S. MCCARTHY.

Subscribed and sworn to before me this 12th day of August, 1936.

(Seal)

WILLIAM EMPEY, JR.,

Notary Public in and for the County of Los Angeles, State of California.

Endorsed: Filed Aug. 12, 1936. L. E. Lamp-ton, county clerk; by A. G. Stanham, deputy.

1279 [TITLE OF COURT AND CAUSE.]

**Intervening Petition of Wilber G. Katz, Norman Crawford and Robert A. Crawford
Objecting to the Plan and Agreement of
Rehabilitation and Reinsurance for Re-
spondent Heretofore Presented to the
Court.**

Now come Wilber G. Katz, Norman A. Crawford and Robert A. Crawford, on behalf of
1280 themselves and all other policyholders of The
Pacific Mutual Life Insurance Company of California, respondent, similarly situated constituting
a class of persons too numerous to be joined in
this petition, by Bell, Boyd & Marshall and Newlin & Ashburn, their attorneys, and respectfully
represent to the court, as follows:

1. Petitioners all reside in the City of Chicago, County of Cook and State of Illinois and
1281 are residents of that State. On the respective
dates set forth below, respondent issued to each
of them its "non-cancellable income policy, insuring them against loss of time through accidental means, and for loss of time by sickness,"
in the respective indemnity amounts for total loss
of time under the respective policy numbers set
forth below:

1282

<u>Date of Issuance of Policy</u>	<u>Name of Insured (Petitioner)</u>	<u>Number of Policy</u>	<u>Indemnity Rate for Total Loss of Time</u>
September 14, 1928	Wilber G. Katz	5,515,757	\$200 a month.
March 23, 1931	Norman Crawford	5,613,144	\$150 a month.
November 18, 1930	Robert A. Crawford	5,612,322	\$ 25 per week.
May 15, 1933	Robert A. Crawford	5,637,353	\$ 25 per week.

Each of said policies contain a provision in substantially the following language: "The Insured shall have the right at the time of such expiration [one year from its date] to renew this policy for a term of [specified] years by the payment of a like premium on the [day of issuance] in each succeeding year, provided, however, that this policy shall not be renewed beyond its anniversary date nearest the sixtieth birthday of the Insured." The number of years specified during which the insured has the right of renewal, in the case of Wilber G. Katz is 33

1283

years, in the case of Norman Crawford is 28 years, and in the case of Robert A. Crawford is approximately 27 and 24 years under his respective policies. Petitioners have paid all premiums falling due under each of said policies (several hundred dollars per policy with one exception), and said policies are all now in full force and effect.

1284

2. Said policies were all issued by The Pacific Mutual Life Insurance Company of California as

1285 the general obligations of that company, and contained no provisions limiting the contractual liability of the company to the class of business covered by the policy written. A photostatic copy of policy No. 5,515,757, issued to petitioner Wilber G. Katz, is attached hereto and made a part hereof as Exhibit A, and petitioners state that the general provisions of each of their policies are substantially in the same form as said Exhibit A.

1286 3. Petitioners are informed and believe, and upon such information and belief state the fact to be, that the respondent has issued many thousands of said policies throughout the United States and the State of Illinois, and that the holders of the same similarly situated to your petitioners are many thousands in number and constitute a class of persons too numerous to be made parties individually to this petition, or in the above entitled proceedings, and your petitioners therefore bring this petition not only in
1287 their own behalf but on behalf of all the other persons constituting said class.

4. Your petitioners state that a few days prior to the date of the execution of this petition (August 10, 1936) they read in the public press accounts of the receivership and liquidation proceedings instituted by petitioner against respondent in this court, and that upon inquiry to the company they were advised by respondent

- 1288** that a plan of rehabilitation was in the process of being adopted which would to some as yet undetermined extent alter and change their rights under their policies. Not until August 7, 1936 did petitioners, or their counsel, read in the public press that objections to the plan of reorganization must be filed by order of court on or before August 12, 1936. Not until August 10, 1936 were petitioners advised of the various proceedings which were had in this court July 22, 1936
- 1289** and of the proposed plan of rehabilitation and reinsurance which was presented to the court as Exhibit A to Commissioner's petition. Petitioners are informed and believe and therefore state the fact to be, that the only public notice of proceedings was given by newspaper advertisement in newspapers published in the Cities of Los Angeles and San Francisco, in the State of California, and that no publication or notice by mail of the rule requiring objections to be filed by
- 1290** August 12, 1936 was made in the State of Illinois, where several thousands of similar policies are held. Your petitioners state that due to the limited time they and their counsel have had since the proceedings and the rule of court above mentioned have come to their attention, they will be unable to proceed at the hearing on objections which they are informed is set for August 12, 1936, and therefore respectfully request that a short continuance be granted so that they may

1291 be heard upon their objections to the plan and agreement which are hereinafter set forth.

5. Your petitioners are further informed that petitions or other papers have been filed in the above entitled proceedings purporting to show that the respondent is insolvent, and that it is proposed to correct such condition of insolvency by the plan and agreement of rehabilitation and reinsurance heretofore presented to the court as Exhibit A to petitioners' petition by providing
1292 in paragraph 7 thereof that the obligation of the new company with respect to the payment of monthly disability benefits on claims either filed or notice of which is filed with the new company at any time after the date of liquidation under non-cancellable policies, should be limited to the payment of certain percentages of the monthly disability benefits originally provided under the policies. Such percentages applied to
1293 the policies of your petitioners will have the effect of reducing the contractual obligation of the insurer to pay such benefits, in the case of petitioner Wilber G. Katz by 55%, in the case of petitioner Norman Crawford by 45%, and in the case of petitioner Robert A. Crawford with respect to policy 5,612,322 by 45% and with respect to policy 5,637,353 by 10%. Your petitioners are further informed and believe that said plan and agreement of rehabilitation and reinsurance provides for no lien upon or other im-

1294 pairment of the insurer's contract in the case of any other outstanding insurance obligation of respondent, except those provisions with respect to the non-cancellable health and accident policies above referred to, and held by your petitioners.

6. Your petitioners hereby object to said plan and agreement for the rehabilitation and reinsurance of the business of respondent, and respectfully ask that the same be not finally approved by the court for the following reasons:

1295 (a) Said plan and agreement fails to take account of the fact that upon the entry of an order of liquidation all the holders of policies of respondent are creditors of the company upon an equal footing without rank or priority between themselves;

(b) Said plan and agreement is not in accord with Section 1033 of the California Insurance Code providing that "claims allowed in a proceeding under this article shall be given
1296 preference in the following order:

1. Expense of administration;
2. Claims having a preference by the laws of the United States or of this State;
3. All other claims;"

in that the claims based upon policies held by your petitioners and others similarly situated have an equal ranking with the ordinary life policies and other insurance policies issued by respondent;

1297 (c) Said plan and agreement either violates the principal of general law referred to in subparagraph (a) above, and recognized in the provisions of the Code referred to in subparagraph (b) above, or, in the alternative, if the rehabilitation and reinsurance sections of the Insurance Code be construed to permit such preference among policyholders of the company, then any such construction of said sections violate the provisions of the Fourteenth Amendment of the

1298 Constitution of the United States and the Constitution of the State of California, prohibiting the taking of property without due process of law and prohibiting the passing of any law which impairs the obligation of a contract.

(d) Said plan and agreement grant unto all other policyholders and other creditors of respondent illegal and inequitable preference in the assets of respondent sought to be passed to the new company, as against the rights of your petitioners and other policyholders similarly situated holding respondent's non-cancellable health and accident policies;

1299 (e) Said plan and agreement is unfair, inequitable, and, as regards your petitioners and those policyholders, similarly situated, constitutes in law an attempt to hinder, delay and defraud them of their rights as such creditors, in that said plan and agreement seeks to transfer all the assets of respondent company to a new corpora-

1300 tion to be formed for such purpose, which, while assuming all other outstanding obligations of respondent, nevertheless assumes only a part of the contractual obligation of respondent to your petitioners and other policyholders similarly situated under said non-cancellable health and accident policies;

(f) The actions of the company and of the petitioner in these proceedings, the Insurance
1301 Commissioner of the State of California, are unwarranted in law as applied to your petitioners' rights and those of similar policyholders, and amount to a taking of your petitioners' and such other policyholders' property without due process of law, in violation of the Constitution of the United States and of the State of California.

Wherefore, your petitioners respectfully pray
1302 that they may be given leave to intervene in these proceedings and file this their intervening petition and objections to said plan and agreement; that upon the hearing of said objections, which they ask may be set on some reasonably short day after August 12, 1936, said plan and agreement may be disapproved by the court, and that in lieu thereof a plan and agreement may be adopted which will treat all creditors and policyholders of respondents on an equitable basis in accordance with law, and that they may have

1303 such other and further relief in the premises as to the court should seem meet.

WILBER G. KATZ,
NORMAN A. CRAWFORD,
ROBERT A. CRAWFORD,
By BELL, BOYD AND MARSHALL,
NEWLIN & ASHBURN,
Their Attorneys.
BELL, BOYD AND MARSHALL,
NEWLIN & ASHBURN,
1304 *Their Attorneys.*

State of Illinois, County of Cook—

Wilber G. Katz, being first duly sworn, on oath states that he is one of the petitioners named in the foregoing petition by him subscribed; that he has read the same, and that the statements therein contained are true in substance and in fact, except those matters which are stated to be made upon information and belief, and as to those he believes them to be true.

1305 WILBER G. KATZ.

Subscribed and sworn to before me this 10th day of August, 1936.

(Seal)

HELEN HILL.
Notary Public.

State of Illinois, County of Cook—ss.

I, Helen Hill, do hereby certify that I am the Notary Public who took the verification of the petitioner named in the foregoing petition to said petition, and that I am duly authorized by

1306 the laws of the State of Illinois to administer oaths.

In Witness Whereof I have hereunto set my hand and notarial seal this 10th day of August, A. D. 1936.

(Seal)

HELEN HILL.

State of Illinois, Cook County—ss.

1307 I, Michael J. Flynn, County Clerk of the County of Cook, Do Hereby Certify that I am the lawful custodian of the official records of Notaries Public of said County, and as such officer am duly authorized to issue certificates of magistracy, that Helen Hill, whose name is subscribed to the annexed Jurat, was at the time of signing the same, a Notary Public in Cook County, duly commissioned; sworn and acting as such, and authorized to administer oaths and to take acknowledgments and proofs of deeds or conveyances of lands, tenements or heredita-
1308 ments, in said State of Illinois, all of which appears from the records and files in my office; that I am well acquainted with the handwriting of said Notary, and verily believe that the signature to the said Jurat is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the County of Cook at my office in the City of Chicago, in the said County, this 10th day of August, 1936.

(Seal)

MICHAEL J. FLYNN,

County Clerk.

1309

EXHIBIT A.

Non-Cancellable Income Policy

This policy provides indemnity for loss of time through accidental means, and for loss of time by sickness; to the extent herein provided.

Founded 1868

[Crest]

1310

The Pacific Mutual Life
Insurance Company of California
(Herein Called Company)

Hereby Insures *** Wilber G. Katz *** (herein called Insured and described in the Application), subject to all provisions and limitations herein contained:

Against disability commencing while this policy is in force and resulting from bodily injury effected through accidental means; and against
1311 disability commencing while this policy is in force and resulting from sickness; as follows:

Total Loss of Time

Part A. (1) The Company will pay indemnity at the rate of *** Two Hundred *** Dollars per month for the period throughout which disability described above consists of continuous, necessary and total loss of all business time, but no indemnity shall be paid under this Part A, or under Parts C, D or E for the first *

- 1312** Three Months of any period of such total loss of all business time, provided, however, that indemnity will be paid for the entire period of such total loss of all business time immediately succeeding a period of partial disability for the entire period of which benefits are payable under the provisions of paragraph (2) of this Part A.

Partial Loss of Time

- 1313** (2) The Company will pay indemnity at the rate of one-half of the amount per month specified in paragraph (1) of this Part A, for any period or periods throughout which disability described above does not consist of total loss of all business time, but consists of continuous inability to prosecute important daily business duties, provided that in each instance the period of such partial disability immediately succeeds a period of total loss of all business time for which indemnity is payable under the provisions of paragraph (1) of this Part A, and provided further that indemnity for such period or periods of partial disability will not be paid for more than a total of six months during any continuous disability.
- 1314**

Hospital Indemnity

Part B. Should the Insured, by reason of bodily injury or sickness covered by this policy, be under treatment and also be resident in a licensed hospital, the Company will pay, in ad-

- 1315 addition to whatever other indemnity may be payable under this policy, monthly indemnity at the rate of 25% of the amount specified in paragraph (1) of Part A, for the continuous period of such residence and treatment, commencing at the first day thereof and not exceeding three months, throughout which the Insured suffers a continuous, necessary and total loss of all business time, but such indemnity will not be paid for more than one period as the result of any one
1316 accident or disease or for more than one period during any continuous disability.

Loss of Both Hands, Both Feet, Hand and Foot
or the Sight of Both Eyes

- Part C. Should the Insured suffer, as a direct result of such injury or such sickness, the loss of both entire hands by complete severance at or above the wrists, or the loss of both entire feet by complete severance at or above the ankles, or
1317 the loss of one entire hand by complete severance at or above the wrist and one entire foot by complete severance at or above the ankle, or the irrecoverable loss of the entire sight of both eyes, he shall be deemed to have sustained a permanent disability resulting in continuous, necessary and total loss of all business time and the Company will pay indemnity at the rate per month specified in paragraph (1) of Part A as long as he shall live, or;

1318

Loss of One Hand or One Foot

Part D. Should the Insured suffer, as a direct result of such injury or such sickness, the loss of one entire hand by complete severance at or above the wrist, or the loss of one entire foot by complete severance at or above the ankle, the Company will pay indemnity at the rate per month specified in paragraph (1) of Part A for the period during which such loss causes disability resulting in continuous, necessary and

1319

total loss of all business time, and at the termination of such disability will consider such loss to have caused a permanent disability of 25%, and will pay the Insured, as long as he shall live, monthly indemnity at the rate of 25% of the amount specified in paragraph (1) of Part A, or;

Loss of the Sight of One Eye

1320

Part E. Should the Insured suffer, as a direct result of such injury or such sickness, the irrecoverable loss of the entire sight of one eye, the Company will pay indemnity at the rate per month specified in paragraph (1) of Part A for the period during which such loss causes disability resulting in continuous, necessary and total loss of all business time, and at the termination of such disability will consider such loss to have caused a permanent disability of 10%, and will pay the Insured, as long as he shall live,

1321 monthly indemnity at the rate of 10% of the amount specified in paragraph (1) of Part A.

*No indemnity except Hospital Indemnity is payable under this policy for the specified first part of any period of disability.

Standard Provisions

1322 1. This policy includes the endorsements and attached papers, if any, and contains the entire contract of insurance except as it may be modified by the Company's classification of risks and premium rates in the event that the Insured is injured or contracts sickness after having changed his occupation to one classified by the Company, as more hazardous than that stated in the policy, or while he is doing any act or thing pertaining to any occupation so classified, except ordinary duties about his residence or while engaged in recreation, in which event the Company will pay only such portion of the indemnities provided in the policy as the premium paid would have purchased at the rate but within the limits so fixed by the Company for such more hazardous occupation.

1323 If the law of the state in which the Insured resides at the time this policy is issued requires that prior to its issue a statement of the premium rates and classification of risks pertaining to it shall be filed with the state official having supervision of insurance in such state, then the premium rates and classification of risks men-

tioned in this policy shall mean only such as have been last filed by the Company in accordance with such law, but if such filing is not required by such law then they shall mean the Company's premium rates and classification of risks last made effective by it in such state prior to the occurrence of the loss for which the Company is liable.

2. No statement made by the applicant for insurance not included herein shall avoid the policy or be used in any legal proceeding hereunder. No agent has authority to change this policy or to waive any of its provisions. No change in this policy shall be valid unless approved by an executive officer of the Company and such approval be endorsed hereon.

3. If default be made in the payment of the agreed premium for this policy, the subsequent acceptance of a premium by the Company or by any of its duly authorized agents shall reinstate the policy but only to cover accidental injury thereafter sustained and such sickness as may begin more than ten days after the date of such acceptance.

4. Written notice of injury or of sickness on which claim may be based must be given to the Company within twenty days after the date of the accident causing such injury or within ten days after the commencement of disability from such sickness.

- 1327 5. Such notice given by or in behalf of the Insured or beneficiary, as the case may be, to the Company at its Home Office, 501 West Sixth Street, in the City of Los Angeles, California or to any authorized agent of the Company, with particulars sufficient to identify the Insured, shall be deemed to be notice to the Company. Failure to give notice within the time provided in this policy shall not invalidate any claim if it shall be shown not to have been reasonably possible.
- 1328 6. The Company upon receipt of such notice, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not so furnished within fifteen days after the receipt of such notice, the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting within the time fixed in the
- 1329 7. Affirmative proof of loss must be furnished to the Company at its said office within ninety days after the termination of the period of disability for which the Company is liable.
8. The Company shall have the right and opportunity to examine the person of the Insured when and so often as it may reasonably

1330 require during the pendency of claim hereunder, and also the right and opportunity to make an autopsy in case of death where it is not forbidden by law.

10. Upon request of the Insured and subject to due proof of loss all of the accrued indemnity for loss of time on account of disability will be paid at the expiration of each month during the continuance of the period for which the Company is liable, and any balance remaining unpaid at the termination of such period will be paid immediately upon receipt of due proof.

11. All the indemnities of this policy are payable to the Insured.

1332 12. If the Insured shall at any time change his occupation to one classified by the Company as less hazardous than that stated in the policy, the Company, upon written request of the Insured and surrender of the policy, will cancel the same and will return to the Insured the unearned premium.

14. No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after proof of loss has been filed in accordance with the requirements of this policy, nor shall such action be brought at all unless brought within two years from the expiration of the time within which proof of loss is required by the policy.

1333 15. If any time limitation of this policy with respect to giving notice of claim or furnishing proof of loss is less than that permitted by the law of the state in which the Insured resides at the time this policy is issued, such limitation is hereby extended to agree with the minimum period permitted by such law.

1334 17. If the Insured shall carry with another company, corporation, association or society other insurance covering the same loss without giving written notice to the Company, then in that case the Company shall be liable only for such portion of the indemnity promised as the said indemnity bears to the total amount of like indemnity in all policies covering such loss, and for the return of such part of the premium paid as shall exceed the pro rata for the indemnity thus determined.

1335 18. Upon the payment of claim hereunder any premium then due and unpaid or covered by any note or written order may be deducted therefrom.

19. If a like policy or policies, previously issued by the Company to the Insured be in force concurrently herewith, making the aggregate indemnity for loss of time on account of disability in excess of \$250.00 weekly, the excess insurance shall be void and all premiums paid for such excess shall be returned to the Insured.

- 1336 20. The insurance under this policy shall not cover any person under the age of eighteen years nor over the age of sixty years. Any premium paid to the Company for any period not covered by this policy will be returned upon request.

Additional Provisions

- 1337 21. This insurance does not cover, (1) any disability for which the Insured is not necessarily and regularly attended by a legally qualified physician other than the Insured; provided, however, that this requirement shall be waived in the event such attendance is declared by medical authority satisfactory to the Company to be unnecessary; (2) any attempt at suicide, sane or insane; (3) disability resulting wholly or partly, directly or indirectly from (a) bodily injury sustained or sickness contracted while the Insured is engaged in military or naval service in time of war, (b) bodily injury or sickness caused by war or by any act of war, (c) bodily injury, fatal or non-fatal, sustained, or sickness contracted by the Insured while in or on any vehicle or mechanical device for aerial navigation, or in falling therefrom or therewith, or while operating or handling any such vehicle or device, (d) bodily injury sustained or sickness contracted except while the Insured is within Canada or Europe or the United States (not including Alaska, Panama Canal Zone or the insular possessions of the United States), or while traveling between them
- 1338

1339 by regular lines of passenger conveyance (not including aerial conveyance).

22. The allowance of indemnity under the provisions of either of paragraphs C, D or E shall proportionately reduce the monthly indemnity payable for all other loss or disability thereafter occurring.

23. After the first twelve months of disability, no indemnity shall be payable for any period of disability during which the Insured is not continuously within the United States (not including Alaska, the Panama Canal Zone or the insular possessions of the United States) unless a written permit to reside elsewhere be granted by the Company.

24. All premiums on this policy are due and payable in advance at the Home Office of the Company, but may be paid to any authorized agent or manager of the Company producing receipts signed by the President, a Vice President, the Secretary or an Assistant Secretary, and countersigned by such authorized agent or manager. A grace of thirty-one days shall be granted for the payment of every premium after the first, during which time the insurance hereunder shall continue in force. After any default in payment of premium this policy may be reinstated as provided in Standard Provision Number 3 at any time within six months from the date of such default on written application

1342 by the Insured to the Home Office of the Company and the payment of the defaulted premium, provided the Insured shall with such application submit evidence of insurability satisfactory to the Company.

25. Indemnity for disability will not be paid under this policy at a rate in excess of the average earnings of the Insured for the period of time that he has been actually employed during the two years immediately preceding the commencement of the disability for which the Company is liable, and all premiums paid during said two years for that portion of the disability indemnity in excess of the amount of such earnings will be returned upon request of the Insured. The Insured shall have the right to reduce any or all of the indemnities of this policy and upon his request and temporary surrender of the policy for endorsement, the Company will endorse it, making such reduction of indemnities and a proportionate reduction in premium.

26. At any time during the life of this policy, if the Insured changes his occupation to one different from that stated in this policy, the Company hereby agrees upon the surrender of this policy to issue in lieu thereof upon the written request of the Insured, a new policy containing the same provisions as this policy except a change in the amount of the benefits payable, the new policy to provide such an amount payable

1345 for disability as the premium paid for this policy will purchase at the rates but within the limits fixed by the Company for such different occupation.

If the age of the Insured has been mis-stated, any amount payable under this policy shall be that amount which the premium paid would have purchased at the rate fixed by the Company for the Insured's correct age; except, that if the true age of the Insured at the time of application for
1346 this policy is over fifty-five, the policy shall be null and void and the Company shall return all premiums received less any indemnity paid prior to the ascertainment of the correct age.

27. The Insured is by occupation a Attorney - Office, Court and Traveling classified Preferred by the Company.

Any assignment of this policy must be in writing. The Company shall not be deemed to have
1347 notice of any assignment unless nor until acknowledgment of said notice shall have been endorsed on the policy and signed by an executive officer of the Company. The Company shall not assume responsibility for the validity of any assignment.

28. The annual premium for this policy is
* * * Forty Eight and 00/100 * * * Dollars
and the policy expires one year from its date.
The Insured shall have the right at the time of such expiration to renew this policy for a term of

- 1348 33 years by the payment of a like premium on the 14th day of September in each succeeding year, provided, however, that this policy shall not be renewed beyond its anniversary date nearest the sixtieth birthday of the Insured. Insurance under this policy is effective in consideration of the payment in advance of the premiums herein provided for and in further consideration of the statements made in the application for this policy,
- 1349 copy of which application is attached hereto and is hereby made a part of this policy. The falsity of any statement in the application, materially affecting either the acceptance of the risk or the hazard assumed hereunder, or made with intent to deceive shall bar all right to recovery under this policy. No provision of the charter, constitution or by-laws of the Company not herein set forth shall be used in defense of any
- 1350 claim arising under this policy. Failure to comply with any of the provisions of this policy shall render invalid any claim under this policy.

In Witness Whereof, the Company has, by its proper officers, signed this Contract in the City of Los Angeles and caused same to be countersigned by its authorized Agent or Manager, as of the 14th day of September, 1928 twelve

1351 o'clock noon, Standard Time at the place of the Insured's residence.

S F McClung
Secretary

George I. Cochran
President

Countersigned

W. B. Snowden
Authorized Agent or Manager

[In margin]: Change of Premium Due Date
See Endorsement

1352 Los Angeles, California, September 14, 1931

On request of Wilber G. Katz, the Insured under Non-Cancellable Income Policy No. 5515757, it is hereby agreed and understood that the premium on said policy shall hereafter be payable as follows:

The sum of Twelve and no/100 dollars shall be paid on September 14, 1931 in lieu of the payment of annual premium. Said sum shall purchase insurance up to and including December 14, 1931. The annual premium of Forty-eight and no/100 dollars shall be paid on December 14, 1931 and a like annual premium shall be paid on December 14th in each succeeding year during the continuance of the policy.

THE PACIFIC MUTUAL LIFE INSURANCE COMPANY OF CALIFORNIA

G. N. Martin

Carry Groton

Assistant Secretary

Junior Vice President

1354

No. 551757

[Crest]

The Pacific Mutual Life Insurance Company
of California

Non-Cancellable

Income Policy

Form A 383

Renewable to Age Sixty

Issued To

1355

* * * Wilber G. Katz * * *

This policy provides indemnity for loss of time through accidental means, and for loss of time by sickness; to the extent herein provided.

No indemnity except Hospital Indemnity is payable under this policy for the first part specified herein of any period of disability.

Please Read Your Policy

1356 Kindly use Black ink as this blank is to be photographed

Application for Insurance—Accident
Department

THE PACIFIC MUTUAL LIFE INSURANCE
COMPANY OF CALIFORNIA

I hereby apply for Non-Cancellable Income Insurance, to be based on the following representations and on the representations that I shall make in answer to the questions to be asked by the Company's Medical Examiner in continuation of this application.

1357 1. What is your full name? (Please print)

Wilber G. Katz

2. Where do you reside?

No. 149 Willow St Street

Town Brooklyn State NY.

3. Where and when, were you born, and what is your age? Town Milwaukee State or Country Wis. Month June Day 7 Year 1902 Age at Nearest Birthday 26 Years

4. What are your occupations? (Describe fully) Lawyer

5. What are the duties required of you? (Describe fully) Legal

6. What is the name of your employer? Root, Clark, Buchner, Howland Ballantine

7a. How long in present occupation? two Years

b. What was former occupation? student.

8. What is the location of your employer's place of business?

1359 No. 31 Nassau Street

Town NY. State NY.

9. Whom do you designate as beneficiary under policy applied for, and what relationship is such beneficiary to you? (Please Print) If for Disability Benefits only, write "None"

None

Relationship

10. Does the disability indemnity applied for in this and other companies or associations together with that under other insurance now held

1360 by you exceed your average monthly earnings?

No

11. Are your personal habits correct and temperate? Yes

12. Have you any Life, Permanent Total Disability, Accident or Sickness Insurance in this or any other company or association? (If in this Company, give policy numbers, State whether Accident and Sickness Indemnity is weekly or monthly.)

1361

	Life Insurance		P. T.D.
Company	Amount	Year Issued	Amount
Mutual L.	5 000	1926	503
Mass.	10,000	1927	100
Mass	10,000	1928	None

Accident and Sickness Insurance

1362

Company	Prin. Sum	Acc. Ind.	Sick Ind.
None			

13. Have you ever made application for life, accident or sickness insurance upon which you have not been notified of the action taken, or has any application ever made by you for life, accident or sickness insurance been declined or

1363 postponed, or has any policy of accident or sickness insurance issued to you been cancelled or renewal refused by this or any other company or association? (Give particulars) No.

14. Have you ever received or been refused compensation for accidental injuries or sickness, or have you any claim now pending? (Give particulars) No

1364 15. Have you ever had or have you now any bodily or mental infirmity or deformity (including hernia and rupture), or have you impaired hearing, any disease of either eye, lost a limb or the sight of an eye, or are you in any respect maimed or in unsound condition mentally or physically? (Give particulars) No

1365 16. Have you in contemplation—any hazardous undertaking—any special journey—or any traveling outside the United States? (Give particulars). No

17. Do you agree that the falsity of any answer in this application for insurance or any answer made to the Company's Medical Examiner in continuance of this application for insurance shall bar the right to recover thereunder if such answer is made with intent to deceive or materially affects either the acceptance of the

1366 risk or the hazard assumed by the Company?
Yes

18. Do you agree that the Company may make in the space provided "For Home Office Endorsements Only" such correction in or addition to this application as may be required, subject, however, to your ratification, which shall be conclusively presumed by your acceptance of any policy issued thereon? Yes

1367 For Home Office Endorsements Only

19. Do you agree that if entire amount of annual premium for the insurance applied for is not paid at time of making this application, there shall be no liability on the part of the Company under this application unless nor until a policy is issued and delivered to you and entire amount of such annual premium actually paid during your lifetime and while you are in good health and free from injury, and do you further agree that if entire amount of such annual premium is paid to the Company's agent at time of making this application, insurance (subject to the provisions of the Company's regular policy of the form applied for) shall be effective from date of medical

1368

1369 examination for said insurance, provided the Company in its judgment shall be satisfied as to your insurability under form of policy applied for, on date of such examination, and do you further agree that if the Company shall not be so satisfied, entire amount of premium paid, without interest, shall be returned?

WILBER G. KATZ

Applicant's own signature in full

1370 Dated at N. Y. NY this 7th day of Sept 1928

Signed in the presence of STEPHEN G PRATT
Soliciting Agent

Statement to Be Signed by Applicant for
Settlement With Agent

No. 528260 I Hereby Declare that I have paid to Stephen G Pratt Agent of The Pacific Mutual Life Insurance Company of California Forty eight no/100 Dollars, and that I hold his 1371 receipt for same, written on receipt form detached from, and corresponding in date and number with this application.

WILBER G. KATZ

Applicant's own signature in full

Date Sept. 6, 1928

Endorsed: Filed Aug. 12, 1936, 4:04 p. m.
L. E. Lampton, county clerk; by J. MacGregor, deputy.

1372 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner v. The Pacific Mutual Life Insurance Company of California, respondent.

Pacific Mutual Life Insurance Company, intervenor. No. 404673.

1373 **Answer to Order to Show Cause of Defendants Rowe Sanderson, Henry B. Safford, Harold Bayly, Robert S. Breyer and Laurens Max Chapman, Non Cancellable Policy Holders.**

Come now the defendants Rowe Sanderson, Henry B. Safford, Harold Bayly, Robert S. Breyer and Laurens Max Chapman and answer the order to show cause issued under date of July 2, 1936, in the above entitled matter, as follows:

1374

I.

That said Rowe Sanderson is the owner and holder of a non-cancellable income policy issued by The Pacific Mutual Life Insurance Company of California, which policy is more particularly designated as Policy #4612349, Form A-284, dated March 1, 1921, and provides for disability benefits of \$750.00 per month, and for the payment of a premium of \$150.00 per annum. All premiums which have become due and payable

1376 upon said policy have been paid and said policy is now in full force and effect.

II.

That said Henry B. Safford is the owner and holder of a non-cancellable income policy issued by The Pacific Mutual Life Insurance Company of California, which policy is more particularly designated as Policy #4622227, Form A-284, dated September 10, 1921, and provides for disability benefits of \$500.00 per month and the 1376 payment of a premium of \$100.00 per annum. All premiums which have become due and payable upon said policy have been paid and said policy is now in full force and effect.

III.

That said Harold Bayly is the owner and holder of a non-cancellable income policy issued by The Pacific Mutual Life Insurance Company of California, which policy is more particularly designated as Policy #4623750, Form A-283, 1377 dated September 19, 1922, and provides for disability benefits of \$400.00 per month and for the payment of a premium of \$110.00 per annum. All premiums which have become due and payable upon said policy have been paid and said policy is now in full force and effect.

IV.

That said Robert S. Breyer is the owner and holder of a non-cancellable income policy issued by The Pacific Mutual Life Insurance Company

1378 of California which policy is in full force and effect; but information as to the details of said policy is not now available and when said information is available it is proposed to amend this answer.

V.

That said Laurens Max Chapman is the owner and holder of a non-cancellable income policy issued by The Pacific Mutual Life Insurance Company of California, which policy is more particularly designated as Policy #4651066, Form A-292, dated August 26, 1924, and provides for disability benefits of \$250.00 per month for the payment / premium of \$66.25 per annum. All premiums which have become due and payable upon said policy have been paid and said policy is now in full force and effect.

° VI.

1380 Said defendants oppose the confirmation, approval and ratification of the permission heretofore given by said court with respect to that certain plan and agreement of rehabilitation, sale and transfer of assets and reinsurance of The Pacific Mutual Life Insurance Company of California, more particularly referred to in said order, and likewise oppose the confirmation and approval of the action of the said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, as liquidator of said In-

1381 surance Company, as well as the action of said Pacific Mutual Life Insurance Company in making, executing and carrying out that certain agreement referred to in said order to show cause.

Said defendants likewise oppose the confirmation and approval of the execution and delivery of the deed and bill of sale attached to the petition filed herein as "Exhibit C" and the action of said Commissioner in transferring and setting
1382 over to the Pacific Mutual Life Insurance Company of the assets of The Pacific Mutual Life Insurance Company of California. And likewise oppose the approval of the terms and conditions upon which it is proposed to issue in exchange securities pursuant to the plan and agreement hereinbefore referred to.

VII.

In support of their opposition, the said defendants allege:

1388 (a) That said defendants have not sufficient information with respect to either the financial condition of the old company or with respect to the facts or the reason upon which the proposed plan of reorganization is based to enable them, or either of them, to determine the necessity of or justification for the proposed plan.

(b) That the plan of reinsurance of the non-cancellable policies, including those of these defendants, as set forth in said Rehabilitation and

1384 Reinsurance Agreement, hereinbefore referred to, constitutes an unlawful and unfair discrimination against the holders of non-cancellable policies in favor of holders of other types of policies and said plan of reinsurance of the said non-cancellable policies is in violation of the rights of said policyholders under the terms of the contract of insurance and impairs the obligations thereof.

(c) The transfer of the assets of the old
1385 company to the new company is without any sufficient or adequate consideration therefor and by virtue thereof, the holders of non-cancellable policies are deprived of substantial property rights and the benefits of the policies held by them are substantially damaged if not entirely destroyed.

(d) Paragraph I of the Rehabilitation and Reinsurance Agreement is indefinite and uncertain in that it is provided that the Insurance
1386 Commissioner reserves certain assets of the old company from transfer to the new company without any provision for the disposition thereof.

(e) The provisions of paragraph XVIII of said agreement are unfair and unjust in that policyholders are bound thereby and deprived of substantial rights without their consent.

(f) Defendants are informed and believe, and upon such information and belief allege, that the facts and circumstances which have prompted the proceedings in this matter by the parties.

1387 thereto are not fully disclosed therein and that
defendants are entitled to a full disclosure there-
of to enable them to more properly present their
defense.

(g) That the order of the court heretofore
made approving the proposed plan and confirm-
ing the transfer of the assets of the old corpo-
ration to the new corporation was made without
notice to or opportunity of defendants, or either
of them, to appear and defend their rights as
1388 the holders of non-cancellable policies and as a
result of said order and said plan and transfer
of assets and of the agreement entered into by
and between the Insurance Commissioner and
the respective companies, the said defendants and
each of them have been deprived of their prop-
erty without due process of law in violation of
the provisions of Section 13 of Article I of the
Constitution of the State of California, and in
violation of Article V, and of Section 1 of Arti-
1389 cle XIV of the Constitution of the United
States: That no process has ever been served
upon said defendants, or either of them.

VIII.

This answer is not intended to constitute an
election on the part of the defendants, or either
of them, either to join in any plan which may
be finally adopted, or to file a claim, and said
answer is filed without prejudice to any rights
of the defendants, or either of them, with re-
spect thereto.

- 1390 Wherefore, said defendants pray that the order of the court heretofore made approving said plan and confirming the transfer of the assets, as herein alleged, be set aside and that the petitioners herein and all of the parties to said plan and agreement be compelled to make a full and complete disclosure of all of the facts and circumstances pertaining to the affairs of the old company and that thereafter said court make such order as may be proper to protect the rights of all parties concerned, including the rights of these defendants as holders of non-cancellable policies, and for such other order as may be proper.
- 1391

HOWARD ROBERTSON,
(HOWARD ROBERTSON)
CHAPMAN AND CHAPMAN,
By L. M. CHAPMAN,
Attorneys for Said Defendants.

Verified.

- 1392 Endorsed: Received copy of the within answer, etc., this 12th day of August, 1936. U. S. Webb, attorney general, by John L. Flynn, deputy, attorney.... for petitioner.

Received copy of the within answer, etc., this 12th day of August, 1936. O'Melveny, Tuller & Myers, by Homer I. Mitchell, attorney.... for Pacific Mutual Life Ins. Co.

Filed Aug. 12, 1936, 2:38 p. m. L. E. Lamp-ton, county clerk; by E. T. Crozier, deputy.

1393 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404673.

Application for Order to Liquidate.

1394 Comes now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and respectfully shows:

1. That petitioner is, and at all times subsequent to April 4, 1935, has been, the duly appointed, qualified and acting Insurance Commissioner of the State of California; that on the 22nd day of July, 1936, pursuant to application for order appointing conservator, the above entitled court did in this proceeding, by order duly given and made under and pursuant to Section 1011 of the Insurance Code of the State of California, appoint petitioner herein as conservator of respondent corporation. That on August 11, 1395 1936, the above entitled court by order duly given and made herein, did ratify, approve and confirm the aforesaid order and appointment, did adopt the same and continue the same in force, and did expressly reappoint your petitioner as conservator as aforesaid. That under and in accordance with the terms of said orders, pe-

1396 tititioner has taken possession, title and charge of the business, affairs and assets of respondent corporation wherever situated.

2. That respondent corporation is insolvent within the meaning of Article 13, Chapter 1, Part 2, Division 1 of the Insurance Code of the State of California, as more fully appears from the last report of examination of respondent made by petitioner, which said last report is attached to petitioner's "Application for Order
1397 Appointing Conservator" on file herein; that it appears to your petitioner that further efforts to proceed under Section 1011 of the Insurance Code of the State of California as conservator would be futile. That the respondent corporation has heretofore and over a period of many years issued its non-cancellable accident and health policies; that the reserves which respondent corporation has set up upon such policies are grossly inadequate; that the premium rate
1398 thereon was and now is entirely inadequate to maintain reserves necessary to mature said policy obligations. That said last report of examination shows that as of December 31, 1935 a deficiency in reserves in the Accident Department of the respondent corporation existed in the amount of twenty-three million, twenty-five thousand, four hundred seventy and 70/100 dollars (\$23,025,470.70); that during the calendar year 1935 the gross premiums received on said non-cancellable policies was less than the gross

1399 amount of claims paid thereon. That said condition has continued and grown worse during the year 1936. That in the opinion of your petitioner said conditions must continue so long as respondent corporation continues to operate its business with the result that deficiencies in its reserves will grow worse. That the earnings from the other departments of respondent corporation have not been, and if respondent corporation were permitted to continue the operation of its business as heretofore, would not be sufficient to make up the deficits attributable to the Accident Department as aforesaid. That the surplus from the other departments of respondent corporation as of December 31, 1935 as disclosed by said report were and are insufficient to restore the impaired reserves of the Accident Department; and the said last report of examination shows that the deficiencies in reserves for all branches of the business of respondent corporation as of December 31, 1935 was seventeen million five hundred sixty-four thousand, three hundred seventy-four and 70/100 (\$17,564,374.70).

3. That your petitioner proposes to use his best efforts to conserve the value of the assets of the respondent corporation taken over in liquidation in order that the greatest amount may be obtained and the best protection afforded for the policyholders, claimants and others interested, and to that end to maintain, so far as

- 1402 possible, the preservation of the goodwill and going concern value of the business, represented in large part by its name, its efficient agency organization and other intangible assets of like nature, all of which, if allowed to lapse into inactivity as a result of these proceedings, would fast deteriorate in value and usefulness, resulting in irreparable damage to the policyholders, creditors, stockholders and public in general; that in order to prevent irreparable injury and
- 1403 damage to the agency organization and goodwill value of respondent corporation and to preserve and conserve its assets for the benefit of its policyholders, creditors, stockholders and the public in general, it is imperative that the assets of respondent corporation be used immediately and continuously in the working out, formulation and preparation of a rehabilitation and/or reinsurance agreement which in the judgment of petitioner will most fairly and equitably preserve
- 1404 the value of the assets and protect the rights, interests, liabilities and claims of all persons concerned herein, including the policyholders, creditors, stockholders and the public in general, and which shall provide for the removal of the causes and conditions which have made this proceeding necessary; that petitioner, as conservator, has heretofore been directed by this court to formulate, work out and prepare a rehabilitation and/or reinsurance agreement. Petitioner

1405 has used and proposes to continue to use his best efforts to effectuate such an agreement.

4. That your petitioner did on July 22, 1936, file with this court and in this proceeding an application for an order to liquidate and wind up the business of said respondent. After said petition was filed and on July 22, 1936, this court, by an order signed by the Honorable Douglas L. Edmonds, one of the judges thereof, did appoint your petitioner as liquidator of the assets
1406 and business of said respondent, and did direct your petitioner, as such liquidator, to wind up and liquidate the business of said respondent, and made further orders in connection therewith, as shown by said order on file in this proceeding.

5. Your petitioner and his counsel have been advised by the Honorable Douglas L. Edmonds, judge of the above entitled court, that he is the holder of a life policy in the sum of \$5,000 issued by respondent corporation; that he has not
1407 heretofore and that he does not now consider that said fact disqualifies him in connection with this proceeding; that, nevertheless, it has occurred to him that it may hereafter be asserted that by reason of his ownership of such policy he was and is disqualified, herein; that over 275,000 persons hold policies of insurance issued by said respondent, and that by reason of the vast number of persons whose rights are involved and the widespread business interests of the respondent, the successful winding up and

- 1408 liquidation of the business and affairs of said respondent is of great public and private importance; that it is essential to the successful liquidation and winding up of the business and affairs of said respondent that the validity and legality of your petitioner's position as liquidator and of his acts as liquidator be clear and certain, otherwise the success of his efforts as liquidator may be seriously impaired. It, therefore, appears desirable that petitioner re-apply to this
- 1409 court for an order to liquidate and wind up the business of respondent corporation, and that this court upon a full hearing, consider this re-application.

6. That heretofore and in said orders appointing petitioner as conservator, this court made its order enjoining and restraining said respondent corporation, its officers, directors, agents, servants and employees, from the transaction of any of the business of said corporation
- 1410 or from the disposition of any of its property or assets until the further order of this court; and said persons, all creditors of said respondent corporation and claimants against said respondent corporation, and all other persons, from interfering in the transaction, conservation, management, operation or disposal of any of the assets of or the business of respondent corporation, or from instituting or prosecuting any action, suit or proceeding, or from levying, any attachment or execution or other process, or sell-

1411 ing under or prosecuting any attachment or execution or other process against any property or assets of said respondent corporation, where-soever situated, without the consent of this court obtained after reasonable notice to petitioner, and it is necessary and desirable that said order so enjoining and restraining said persons may continue in full force and effect in favor of petitioner as liquidator herein.

7. That there are pending various claims of 1412 alleged creditors and obligees of respondent; that it is necessary and proper that all creditors and obligees of respondent and all persons having claims against said respondent be given reasonable opportunity to present and file their claims with petitioner after he has been appointed liquidator of the business and affairs of respondent; and that petitioner, after his said appointment, have reasonable opportunity to examine into and pass upon the merits of said claims.

1413 Wherefore, petitioner prays for an order of this court:

1. Ratifying, approving and confirming the "Order of Liquidation" made herein by the Honorable Douglas L. Edmonds under date of July 22, 1936, and adopting the same and continuing it in force.

2. Fixing July 22, 1936, at the hour of 1:00 p. m., Pacific Standard Time, as the date and time as of which the rights and liabilities of re-

1414 spondent corporation and of creditors, policyholders, shareholders and members, and all other persons interested in the assets of said respondent corporation shall be fixed.

3. Appointing Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, as liquidator of all of the assets and business of The Pacific Mutual Life Insurance Company of California.

1415 4. Confirming all of the right, title and interest heretofore owned by respondent corporation in and to its assets and property, real and personal, wheresoever situated, and heretofore vested in petitioner as conservator, in petitioner or his successor in office as liquidator of The Pacific Mutual Life Insurance Company of California.

1416 5. Directing petitioner to conduct, manage and operate the business of respondent corporation pending the final adoption and final approval of a plan of rehabilitation and reinsurance or until further order of this court.

6. Directing petitioner, as liquidator, to wind up and liquidate the business of respondent corporation.

7. Directing petitioner, as liquidator, forthwith if possible, to formulate, prepare and sub-

1417 mit, for the approval of the court, a plan and
agreement of rehabilitation and reinsurance
which, in the judgment of petitioner, will best
preserve the value of the estate in liquidation
and provide for the removal of the causes and
conditions which have made this proceeding nec-
essary, and most fairly and equitably protect and
provide for the rights, interest, liabilities and
claims of all persons concerned herein, and di-
1418 recting petitioner to pay from or make provision
for the payment from the assets of respondent
corporation of all expenses necessarily incurred
in connection therewith;

8. Continuing in full force and effect for the
benefit of petitioner, as liquidator, all of the in-
junctions and restraints aforesaid upon any and
all persons by said order of this court appoint-
ing petitioner as conservator of the business and
1419 assets of respondent corporation.

9. Directing petitioner at an appropriate
time to publish notice to the policyholders, cred-
itors, shareholders and all other persons inter-
ested in the assets of respondent corporation to
file their claims with him as liquidator in his
offices located at the Pacific Mutual Building,
Los Angeles, California, or at 417 Montgomery
street, San Francisco, California, with proper

1420 proofs thereof, within six months after the date of first publication of such notice; and

10. Ordering and adjudicating that neither this application nor any order nor order to show cause made or issued hereon shall constitute any revocation or abrogation of any orders heretofore made in this proceeding or any adjudication or ruling with respect to the effect of the ownership of said policy upon the right of the

1421 Honorable Douglas L. Edmonds to sit or act or make any of the orders heretofore made by him herein; and

11. For such other and further relief as this court may deem meet and proper.

Dated: August 13th, 1936.

SAMUEL L. CARPENTER, JR.,

SAMUEL L. CARPENTER, JR.,

*Insurance Commissioner of the State of
California.*

1422

U. S. WEBB,

Attorney General,

By JOHN L. FLYNN,

Deputy Attorney General,

Attorneys for Petitioner.

Verified.

Endorsed: Filed Aug. 13, 1936. L. E. Lampton, county clerk; by A. G. Stanham, D. 11, deputy.

1423 [TITLE OF COURT AND CAUSE.]

Complaint in Intervention.

Application for Order to Liquidate.

Now comes J. Parker Evans, by and through Frank N. Julian, as Superintendent of Insurance of Alabama, on behalf of himself and all other holders of Active-Life Non-Cancellable Income Policies (hereinafter called Non-Can Policies) issued in the State of Alabama by Pacific Mutual Life Insurance Company, who may wish to join with him in the proceeding, and makes answer to the rule and order to show cause directed to all holders of such policies and issued out of this court pursuant to an order entered herein on, towit the 23rd day of July, 1936, and for such answer shows unto the court as follows:

1. The rehabilitation, sale and transfer of assets and reinsurance plan and agreement concerning Pacific Mutual Life Insurance Company of California proposed by Samuel L. Carpenter, Jr., Insurance Commissioner of California, dated July 22, 1936, as amended (hereinafter called Plan and Contract) ought not to be confirmed unless and until the holders of such Non-Cancellable Income Policy Contracts have been protected in the particulars hereinafter mentioned.

In general, Non-Can policyholders of whom there are fifty thousand, are obliged to elect

- 1426** within sixty (60) days whether they will accept reinsurance or, declining reinsurance, prove their claims as creditors. All other policyholders receive approximately the full benefits provided by their policies. Non-Can policyholders alone (with exceptions that are here immaterial) are the creditors. As such creditors, they must make the aforesaid election without knowing or being able to ascertain what are their rights, or what the consequences of their election may be. They
- 1427** do not know (and no one can tell them) whether, if declining reinsurance and they prove claims, their claims would be allowed to the extent of their ratable participation in the unearned premium reserve amounting to approximately \$2,900,000.00, or in the reserves set up by the old company in respect to all Non-Can Active-Life policies amounting to approximately \$6,000,000.00, or in the full amount of reserve set up by the Convention Examination amounting to
- 1428** approximately \$24,000,000.00. In total darkness they must choose between this undefined alternative and the opposite alternative of accepting reinsurance, which in its present form is either undefined or fails in its definition to give them rights to which they are entitled.

The whole Plan and Contract is based upon the theory that Non-Can policies were the cause of the company's downfall, and, consequently, must be excluded or greatly reduced from participation in assets, and throughout the Plan is

1429 implicit & penalizing of Non-Can policyholders. There is no stewardship set up in the Plan for the preservation of Non-Can policy rights.

More particularly:

A. All Active-Life Non-Can policyholders are permitted under paragraph 9 of the Contract to reinstate their policies that have lapsed in the manner provided in said policies, and in addition are granted the right under paragraph 4 of the Contract to reinstate such policies within 60 days
1430 after the effective date of the Agreement, subject to the reduction in benefits provided by the Contract; but if in the meanwhile a Non-Can policyholder has become disabled so as to be "eligible for benefits under the policy," he is denied this right. This is inequitable. The contract was breached through no fault of his; he has been thrown into a panic through the widely publicized fact of the company's insolvency. He does not know and could not ascertain from
1431 anywhere what his rights and liabilities are. If, under these circumstances, he has failed to pay his premium or prudently waited to ascertain his rights, he should, after learning his rights, be able to reinstate his policy on the same terms as the policyholder who has not become disabled.

B. Paragraph 8 of the Plan and Contract sets apart future earnings for the restoration of benefits to Non-Can policyholders; but this paragraph does not fix the time as of which the

1432 restoration shall be made. It provides that the
“Extent” as well as the “Manner of the ap-
plication of sums equivalent to such net profits
to the restoration of benefits” are both matters
of future determination. The time when the
restoration will be made and the manner of its
application must necessarily be matters of dis-
cretion, but the time as of which is a fact neces-
sary to be known by any Non-Can policyholder
1433 who is put to an election of accepting or reject-
ing reinsurance.

Active-Life Non-Can policyholders who be-
come disabled and receive reduced benefits be-
fore any restoration should receive with their
settlements certificates evidencing their right to
their distributive share of future restorations.

With reference to Non-Can policyholders who
shall lapse: Their policies having been breached
1434 by insolvency, why should their right to partici-
pate in restorations and in the present reserves
be terminated by their lapse? Stockholders’
rights, which are junior to them, do not at any
time lapse. Active-Life Non-Can policyholders
in the aggregate now own at least \$6,000,000
of reserves included in the \$214,000,000 of assets
being administered. Should they not have at
least this much cash value after the moratorium?

1435 If it be said that accepting reinsurance alters this right, then should the agreement not clearly provide that any of this \$6,000,000 reserve released by lapse of Active-Life Non-Can policies should go to the restoration fund of those who who do not lapse? We are told today that this last provision is implied; although sub-division (d) of paragraph 15 apparently carries any such released reserves to the Company's surplus and 1436 to the general benefit of all policyholders.

C. Paragraph 12, subdivision (d) of the Plan and Contract obligates the new company to pay, so far as available funds will pay, all claims against the old company. This does not protect the Non-Can policyholder. Available funds as therein defined are limited to the difference between the value of the old company's assets and the amount of the reserves established 1437 by the new company. This could in no event exceed in amount approximately the unearned premium reserves. The Convention Examination has determined that the present value of all Active-Life Non-Can policies is \$24,685,977.00 in the same sense that the present value of all the policies of life insurance is \$154,989,200.00. Against this \$24,685,977 of present net worth, the old company had approximately \$6,000,000.00

1438 of reserves which were transferred intact to the new company. No provision is made by which the amount of reserves transferred to the new company so released by a Non-Can policyholder's declining reinsurance should be made available to the Commissioner for application upon the Non-Can policyholder's claim when allowed. It is unthinkable that at least this \$6,000,000.00 reserve, or so much thereof as might be released **1439** by the declining of reinsurance by Non-Can policyholders should not be made applicable to the payment of their claims.

Future earnings of the new company are by paragraph 8 of the Contract charged with restoration of benefits to Non-Can policyholders reinsurance; ratable participation in such future earnings should be secured to Non-Can policyholders declining reinsurance and proving their **1440** claims. And this right of future participation should be in addition to the present cash value of their claims allowed by the court to be immediately paid by the new company under subdivision (d) of paragraph 12 of the Contract.

D. In subdivision (d) of paragraph 15 of the Contract, all reserves released by the lapse of Non-Can policies (in excess of the normal ten percent per year) are applied to the reserves

1441 or surplus of the new company, benefitting all Life policyholders as well as Non-Can policyholders. There being \$6,000,000.00 of such reserves paid over intact to the new company in the transfer of assets, which \$6,000,000.00 belongs under any circumstances to Non-Can policyholders, it is inequitable that any of this \$6,000,000.00 released by lapse should be applied to anybody's benefit but Non-Can policyholders.

1442 E. Under paragraph 16 of the Plan and Contract, upon the mutualization of the new company, the purchase price of the capital stock held by the Commissioner is fixed at an amount sufficient to pay the outstanding claims and any excess to be repaid to the new company; unless the allowances hereinabove recommended are made to Active-Life Non-Can policyholders, including those who accept reinsurance and those

1443 who prove their claims, then they as the creditors ought to receive the full "going concern" value of the new company's business represented by the new company's stock held by the Commissioner; Active-Life Non-Can policyholders are the sole creditors. This stock is the only tangible asset held by the Commissioner for their benefit. If they do not accept reinsurance but on the contrary prove their claims, they ought to

1444 receive the utmost value of these shares until they have received the full amount of \$24,685,-977 determined by the Convention Examination to be the present worth of their policies.

2. There should be a scrupulous regard, a trusteeship, protected by the most adequate sanctions, for the rights of Non-Can policyholders. This is totally absent from the Plan and Contract. The chaos in the minds of 50,000 Non-Can policyholders with respect to their rights
1445 and their utter inability to know their rights or to protect the same, calls for the greatest solicitude from this court in providing for their adequate protection.

And now, having answered the rule and order to show cause, the said J. Parker Evans, acting by and through Frank N. Julian, as Superintendent of Insurance of Alabama, on behalf of himself and all other Alabama Non-Can policyholders as aforesaid, prays that this answer
1446 be taken as a cross-bill; that by appropriate process Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, in his capacity as petitioner; The Pacific Mutual Life Insurance Company of California, a corporation; Pacific Mutual Life Insurance Company, a corporation; be made parties respondent hereto, and that upon a final hearing of this cross-petition, this Honorable Court will order and direct such amendment, revision and changes in the Plan and Contract as will provide for the application

1447 to the relief of Non-Can policyholders of all assets and respective earnings as defined in said Plan and Contract equitably and ratably so that no discrimination will exist in favor of those who accept reinsurance over those who decline reinsurance. And cross-petitioner further prays that appropriate representatives of this Honorable Court, representing no other right but Non-Can policyholder rights, and amenable to the direction of the court, be appointed to represent, 1448 carry out and protect Non-Can policyholder rights until all of the benefits provided by the Plan and Contract so amended have been fully accomplished.

And if cross-petitioner is mistaken in the relief herein prayed for, then he prays for such other general, special or other relief as to this Honorable Court may seem right and proper.

And, as in duty bound, cross-petitioner will ever pray, etc.

1449 Dated: August 11, 1936.

A. A. CARMICHAEL,
Attorney General of Alabama.

FRANK E. SPAIN,
*Special Assistant Attorney General
of Alabama.*

Verified.

[ETC] 06

Endorsed: Filed Aug. 14, 1936, 10:47 a. m.
L. E. Lampton, county clerk; by E. T. Crozier,
deputy.

1450 [TITLE OF COURT AND CAUSE.]

**Petition With Respect to Rehabilitation, Sale
and Transfer of Assets and Reinsurance
Plan and Agreement.**

Comes now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and respectfully shows:

I.

That petitioner is, and at all times subsequent
1451 to April 4, 1935, has been the duly appointed, qualified and acting Insurance Commissioner of the State of California. That on the 22nd day of July, 1936, pursuant to application for order appointing conservator, the above entitled court did, in this proceeding, by order duly given and made under and pursuant to section 1011 of the Insurance Code of the State of California, appoint petitioner as conservator of respondent corporation; that on August 11, 1936, the above
1452 entitled court, by order duly given and made herein, did ratify, approve and confirm the aforesaid order and appointment and did adopt the same and continue the same in force and did expressly reappoint your petitioner as conservator as aforesaid. That on July 22, 1936, the above entitled court, pursuant to application of petitioner, by its order duly given and made herein, did appoint petitioner as liquidator of the assets and business of respondent corporation.

- 1453 That an application of your petitioner for an order ratifying, approving and adopting said order and continuing the same in force, and for reappointment of your petitioner as liquidator, is now on file herein, and an order to show cause has been issued thereon returnable on August 20, 1936. That under and in accordance with said orders and each of them, petitioner has taken possession, title and charge of the business affairs, properties and assets of respondent
- 1454 corporation wherever situated.

II.

- Your petitioner, pursuant to the terms of said orders and each of them, has proceeded in the working out, formulation and preparation of a rehabilitation and reinsurance plan and agreement concerning respondent corporation, which, in his judgment, would preserve the value of the assets heretofore owned by respondent corporation and would fairly and equitably protect the
- 1455 rights, obligations and liabilities of all persons interested in the assets, business and affairs, of said respondent corporation.

III.

In the formulation and preparation of said plan and agreement your petitioner has proceeded upon the theory that the same should:

- (1) Preserve the value of the assets of the estate for the benefit of its creditors and policy-holders;

1456 (2) Protect, as far as possible, all of the existing legal rights of all interested parties in the assets of respondent corporation now in liquidation;

(3) Afford the opportunity to policyholders to maintain, in so far as may be possible, the continuity of their insurance policies;

(4) Enable the established business created by respondent corporation to be protected and maintained as a going concern;

1457 (5) Protect the solvency of the corporation in which policies may be reinsured by avoiding the primary cause of the condition of respondent corporation, namely, the writing of non-cancellable disability and life policies on such a basis that the losses and required reserves cannot be paid or maintained.

IV.

1458 On July 22, 1936, your petitioner proposed a plan of rehabilitation and reinsurance to respondent corporation, and on the same date filed herein his "Petition for an Order Permitting, Approving and Authorizing the Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan of The Pacific Mutual Life Insurance Company of California", wherein and whereby, said plan was presented to this court and proposed for approval. Under said plan and agreement petitioner proposed the organization of a new California corporation for the purpose of con-

1459 ducting a life and disability insurance business having a capital of \$1,000,000, consisting of 10,000 shares of the par value of \$100 each, all of one class. Petitioner further proposed that all of the authorized stock of said corporation be purchased with assets or funds heretofore belonging to respondent corporation in the amount of \$3,000,000, and the transfer to said new corporation of all of the other assets formerly, and as of July 22, 1936, held by respondent cor-
1460 poration, or by himself) as liquidator thereof, except the stock of said new corporation, and any and all rights or claims of whatsoever kind said respondent corporation or petitioner in his capacity as liquidator of the respondent corporation might then have against any of the present or past officers, directors or employees, as such, of respondent corporation, or against any other person, firm or corporation by reason of wrongful or illegal acts or omissions of any of
1461 the past or present officers, directors or employees of respondent corporation, including rights or claims under any fidelity or surety bond or bonds given to or in favor of the respondent corporation to secure the faithful performance of any of its officers, directors or employees of any of their duties as such. Said plan and agreement further provided and contemplated in substance that the new corporation would assume and re-insure, to the extent and in the manner therein stated, present outstanding policies of insurance,

1462 and also provided for the assumption and payment by the new company to the extent and in the manner therein provided of all expenses of administration of its business and all claims of policyholders and others filed and finally allowed in said proceeding. Said plan and agreement also made provision to the extent and in the manner therein stated for payments to stockholders of respondent corporation.

Your petitioner considered it impracticable to **1463** formulate or attempt to carry into effect a plan of involuntary mutualization in the manner referred to in section 1045 of the Insurance Code, but your petitioner considers it desirable that the new company should operate as soon as possible on a mutual basis, and he therefore included in the above mentioned plan and agreement provisions looking to the eventual voluntary mutualization of the new company. In this connection said plan provided that as soon as legally **1464** possible the new company and petitioner as holder of its outstanding stock, should prepare and present to the policyholders of the new company, a plan for its voluntary mutualization, and that sums paid by the new company for the acquisition of the outstanding stock pursuant to such mutualization plan if accepted, and not required for the satisfaction of allowed claims against respondent corporation, are, under said plan, to be repaid by your petitioner to the new company.

1465 Thereafter, and on July 23, 1936, petitioner proposed and presented to this court for its approval, an amendment to the plan as originally proposed. The said plan as so amended was to be effectuated by the execution of an agreement between petitioner and said new company in substantially the form contained in Exhibit A attached hereto and made a part hereof.

 The matter in this paragraph contained is only a brief summary of the terms of said plan,
1466 and reference is made to said Exhibit A for the complete detailed terms thereof.

V.

 On July 22, 1936, this court, the Honorable Douglas L. Edmonds, Judge presiding, by its "Order Permitting, Approving and Authorizing Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement of The Pacific Mutual Life Insurance Company of California,"
1467 duly given and made herein did approve said plan and agreement and did declare the same to be fair and equitable to all interested parties; did authorize and order the organization of a new corporation and the use of funds and assets in connection therewith and in accordance with said plan; did authorize and order the execution of said agreement; did authorize, permit and order the transfer of assets in accordance therewith; did authorize and order the new corporation to commence and carry on an insurance business;

1468 and did generally authorize and order the doing of necessary, desirable and proper things in connection therewith. Thereafter, and on July 23, 1936, this court, the Honorable Douglas L. Edmonds, Judge presiding, did by its "Order Approving Amendment of Rehabilitation, Sale and Transfer of Assets and Reinsurance Agreement", approve petitioner's proposed amendment to said agreement.

VI.

1469 That your petitioner and his counsel have been advised by the Honorable Douglas L. Edmonds, Judge of the above entitled court, that he is the holder of a life policy in the sum of \$5,000 issued by respondent corporation; that he has not heretofore and that he does not now consider that said fact disqualified him in connection with this proceeding; that, nevertheless, it has occurred to him that it may hereafter be asserted that by reason of his ownership of such policy
1470 he was and is disqualified herein; that over 275,000 persons hold policies of insurance issued by said respondent, and that by reason of the vast number of persons whose rights are involved and the widespread business interests of the respondent, the successful winding up and liquidation of the business and affairs of said respondent is of great public and private importance; that it is essential to the successful effectuation of the rehabilitation and reinsurance of the

1471 business and affairs of respondent that no doubt
exist of the validity, legality or propriety of said
plan and agreement or of its approval by this
court. It therefore appears desirable that peti-
tioner reapply to this court for its order in con-
nection with said plan and agreement and secure
a reapproval thereof.

VII.

That Pacific Mutual Life Insurance Company,
the new company referred to in the plan afore-
1472 said (hereinafter sometimes referred to as "new
company"), has been organized in accordance
with said plan; that an agreement in the form
referred to in said plan was executed by the
new company and your petitioner on July 23,
1936; that the funds, properties and assets,
which, by the terms of said plan and said agree-
ment were to be transferred to the new corpora-
tion were, by deed and bill of sale executed by
the petitioner and respondent corporation and
1473 the new company, transferred to the new com-
pany under date of July 22, 1936. That the
new company has commenced to do, and is now
doing, and has since July 22, 1936, been doing
an insurance business. Said new company is
now operating under certificates of authority is-
sued by the insurance authorities of thirty-three
or more of the states of the United States.

VIII.

Your petitioner believes that said plan and
agreement of reinsurance and rehabilitation will

- 1474** preserve the value of the assets formerly owned by respondent corporation, including its agency organization, goodwill and other intangible or nonstatement assets; that the same is and will be fair and equitable to the policyholders, creditors and stockholders of respondent corporation; and that the provisions for mutualization of the new company will be and are attractive to both old and prospective policyholders and will strengthen the financial condition of the new
- 1475** company.

IX.

- In order that no question may hereafter be raised concerning the validity of the plan aforesaid, your petitioner deems it advisable that if and after an order has been entered herein ratifying, approving and adopting the order of liquidation heretofore entered herein, and ordering liquidation of respondent corporation, your petitioner be authorized and directed to execute a
- 1476** Rehabilitation, Sale and Transfer of Assets and Reinsurance Agreement dated as of July 22, 1936, in substantially the form of that heretofore executed and attached hereto as Exhibit A; that said plan and agreement be approved and confirmed; that the transfer to the new company of the assets heretofore owned by respondent corporation be ratified, approved and confirmed; and that your petitioner be authorized and directed to execute such documents as may to him seem reasonably necessary or desirable for the purpose

1477 of confirming title to all of said assets, in the new company and carrying out the intents and purposes of said plan and agreement.

X.

Your petitioner calls to the particular attention of this court the provisions of paragraph 25 of the agreement aforesaid, which paragraph provides that said agreement may be amended at any time while petitioner remains liquidator of respondent corporation, by consent of petitioner
1478 and the new company, subject to the approval of this court. It is the intention of your petitioner to use his best efforts to the end that the policyholders, creditors and stockholders of respondent corporation shall be fairly, justly and equitably treated; and if, upon full hearing on this petition it shall seem desirable that amendments be made for the purpose of clarifying any provisions of said plan or agreement or of improving the same in any particular, your petitioner and the new
1479 company will consent to such amendments and submit the same for approval at or during the hearing hereon.

XI.

Petitioner further deems it desirable that a hearing be had upon the fairness of the terms and conditions upon which it is proposed, pursuant to said plan and agreement, to issue and exchange securities in exchange for one or more outstanding securities, claims, or property inter-

MICROCARD

TRADE MARK



22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

211

38-69



1480 ests, or partly on such exchange and partly for cash, at which hearing all persons to whom it is proposed to issue securities in such exchange shall have a right to appear.

Wherefore, your petitioner prays that an order be made herein directing the respondent corporation, its policyholders, creditors and stockholders and all other persons interested in these proceedings, at a time and place designated therein, upon such notice as this court may prescribe, to show cause if any they have, why an order should not be made and entered herein as follows:

1. Ratifying, approving and confirming the "Order Permitting, Approving and Authorizing Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement of The Pacific Mutual Life Insurance Company of California" made herein by the Honorable Douglas L. Edmonds under date of July 22, 1936, and continuing it in force.

2. Ratifying, approving and confirming the "Order Approving Amendment of Rehabilitation Sale and Transfer of Assets and Reinsurance Agreement" made herein by the Honorable Douglas L. Edmonds under date of July 23, 1936, and adopting the same and continuing it in force.

1483 3. Approving the plan and agreement of rehabilitation sale and transfer of assets and reinsurance as set forth in Exhibit A of this petition and declaring the same to be fair and equitable to all interested parties.

4. Authorizing and ordering petitioner and Pacific Mutual Life Insurance Company to execute an agreement as of July 22, 1936, in substantially the form set forth in said Exhibit A.

1484 5. Ratifying, approving and confirming the transfer to Pacific Mutual Life Insurance Company of the assets heretofore owned by respondent corporation.

6. Authorizing and directing petitioner to execute such documents as may to him seem reasonably necessary or desirable for the purpose of confirming title to all of said assets in Pacific Mutual Life Insurance Company and carrying out the intents and purposes of said plan and agreement.

1485

7. Directing the officers, directors, agents and employees of respondent corporation to cooperate with petitioner and Pacific Mutual Life Insurance Company in the effectuation of said plan by the execution of such documents of transfer, conveyance, assurance or otherwise, and the

1486 doing of such acts in connection therewith as may be requested of them by petitioner.

8. Approving the terms and conditions upon which it is proposed, pursuant to said plan and agreement, and said amended agreement, to issue and exchange securities after a hearing upon the fairness of such terms and conditions.

9. Ordering and adjudicating that neither the application herein nor this order to show cause,
1487 nor any other order made or issued hereon, shall constitute any revocation or abrogation of any orders heretofore made in this proceeding or any adjudication or ruling as to the effect of the ownership by Honorable Douglas L. Edmonds of a life policy issued by respondent upon his right to sit or act or make any of the orders heretofore made by him herein.

1488

SAMUEL L. CARPENTER, JR.
Insurance Commissioner of the
State of California

Petitioner

U. S. WEBB, Attorney General

By JOHN L. FLYNN

Deputy Attorney General

Attorneys for Petitioner

Verified.

1489

[EXHIBIT "A".]

Rehabilitation, Sale and Transfer of Assets and
Reinsurance Plan and Agreement Concern-
ing The Pacific Mutual Life Insurance Com-
pany of California

Proposed July 22, 1936

By Samuel L. Carpenter, Jr., as Insurance Com-
missioner of the State of California

1490 REHABILITATION, SALE AND TRANSFER OF
ASSETS AND REINSURANCE PLAN AND
AGREEMENT CONCERNING THE PACIFIC
MUTUAL LIFE INSURANCE COMPANY OF
CALIFORNIA

PRELIMINARY STATEMENT

1. History of Company and Necessity for
Plan.

1491 The Pacific Mutual Life Insurance Company
of California was organized under the laws of
the state of California in 1867. Its principal
office is located in Los Angeles, California, and
since its organization it has engaged principally
in the business of life insurance and also in the
business of accident and health insurance, and it
has been carrying on its business in more than
forty of the forty-eight states of the United
States and has reached a position of major im-
portance. It is authorized to write, and for
many years has written life insurance policies on

- 1492** a participating basis as well as life, accident and health insurance policies on a nonparticipating basis. According to its last balance sheet as of December 31, 1935 it has total admitted assets of \$215,561,220.32. Its premium income for the past three years has averaged \$30,393,211.95 per year. Its policyholders exceed 250,000 in number and it has issued and outstanding (including treasury shares) 508,200 shares of its capital stock held by more than 2800 persons. The total
- 1493** life insurance written by it and in force prior to the court proceedings hereinafter mentioned, was approximately \$636,454,000.

In 1918 it commenced writing a new type of policy, viz., a noncancelable disability income policy, which proved to be attractive to the public. Due to the fact that there was little or no actuarial experience on this type of policy at that time, the premium rate established was too low and the reserves established thereon have proved

1494 to be inadequate. At the present time and for the past three years the Company has been paying, on the average, approximately \$4,108,000 per year by way of disability benefits on these policies, resulting in substantial annual losses on this class of business. On the basis of past experience with this type of policy, the probable future disability claims on outstanding policies would be so substantial as to make the continuation of the Company's business on its present basis hazardous to all policyholders.

1495 As a result of the recent tri-annual Convention Examination of the affairs of the Company, Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, with the approval of the Insurance Commissioners of other states who participated in the Examination, determined to take the proceedings hereinafter mentioned to preserve the assets of the Company and, so far as possible, its agency organization, good will and going business value for the benefit
1496 of its policyholders and all other persons interested therein.

2. Court Proceedings.

On July 22, 1936, the Insurance Commissioner, acting pursuant to the California Insurance Code, filed an application with the Superior Court of the State of California in and for the County of Los Angeles, alleging the Company to be in such condition that its further transaction of
1497 business would be hazardous to its policyholders, creditors and the public, and that it was insolvent, and requesting an order vesting title to all of the assets of the Company in the Commissioner in his official capacity and directing the Commissioner to take possession of all of its books, records and properties and to conduct, as conservator, the business of the Company and enjoining the Company from the transaction of its business or the disposition of its property until a further order of court. On the same day an

1498 order of court was made and entered granting the application and appointing the Commissioner conservator.

Thereafter, upon further application of the Commissioner, an order of liquidation was made, appointing him liquidator of the Company. In its order the court directed the Commissioner to formulate a plan and agreement of reinsurance and rehabilitation or sale and transfer of assets, which in the judgment of the Commissioner will
1499 best preserve the value of the estate in liquidation and provide for the removal of the causes and conditions which made the proceeding necessary and most fairly and equitably protect and preserve the rights, interests, liabilities and claims of all persons concerned. Thereafter, the Commissioner presented to the court and the court approved the following plan and agreement.

PLAN

1500 1. Organization of New Company.

The Commissioner, as liquidator, and as such vested with title to all of the properties and assets of the Company, will organize a new corporation (hereinafter referred to as the "New Company") under the laws of California for the purpose of conducting a life and accident and health insurance business. The New Company will have an authorized capital of \$1,000,000 consisting of 10,000 shares of the par value of \$100 per share, all of one class. Although a stock company, it

1501 will be authorized to issue participating policies on a legal reserve basis. The directors of the New Company will be selected and approved by the Commissioner. The Commissioner will subscribe for and purchase with assets or funds held by him as liquidator of the Old Company all of the authorized stock of the New Company for \$3,000,000, which will thus establish the New Company with a paid-in capital of \$1,000,000 and a paid-in surplus of \$2,000,000. The stock
1502 of the New Company thus issued to the Commissioner as liquidator of the Old Company will be held by the Commissioner subject to the ultimate mutualization of the New Company, as hereinafter provided.

2. Transfer of Assets to New Company.

All of the properties and assets formerly owned by the Old Company and held by the Commissioner as its liquidator will be transferred and
1503 conveyed to the New Company, with the exception of the stock of the New Company and certain claims reserved to the Commissioner as liquidator in the agreement hereinafter set forth.

3. Treatment of Policyholders.

Under the plan and agreement the policyholders of the Old Company will be given the following rights:

(a) All policyholders (other than holders of any form of noncancelable income policies hereinafter referred to as "non-can policies") will

1504 be entitled either (1) to accept the assumption and reinsurance by the New Company of their existing policies or (2) to file a claim with the Commissioner as liquidator of the Old Company:

(b) The holders of non-can policies will be entitled either (1) to file a claim with the Commissioner as liquidator of the Old Company, or (2) to accept the assumption and reinsurance by the New Company of their existing policies on the reduced basis provided in the agreement hereinafter set forth.

1505

4. Assumption by New Company of Expenses, Allowed Claims and Policy Claims.

The New Company will assume and agree to pay the following:

1506

(a) All expenses of the administration of the Commissioner as conservator and liquidator of the Old Company, including such attorneys' fees as may be fixed by the Attorney General of the State of California and approved by the court in the conservation and liquidation proceeding;

(b) Unpaid taxes, wages, salaries and current operating bills of the Old Company;

(c) All claims filed with the Commissioner as liquidator of the Old Company and finally allowed by the commissioner and/or by the court;

(d) All policy claims of whatever character (except claims on non-can policies), whether

1507 filed, or whether notice of which was filed, prior or subsequent to the order of liquidation; subject, however, to any and all defenses thereto which would have been available to the Old Company;

(e) Only such claims on non-can policies, as were filed, or notice of which was filed with the Old Company prior to the order of liquidation; subject, however, to any and all defenses thereto which would have been available to the Old Company;

1508 pany;
Provided, however, that the obligation of the New Company with respect to items (a), (b) and (c) shall be limited to the value of the properties and assets of the Old Company transferred to the New Company pursuant to the agreement hereinafter set forth less the reserves established by the New Company with respect to policies and policy claims of the Old Company assumed and/or reinsured by the New Company.

1509 5. Agents' Contracts.

The New Company will assume all outstanding agents' contracts executed by the Old Company provided, however, (a) no commissions due after the order of liquidation shall be paid on non-can policies on all forms issued prior to, and including, Forms A 291 to A 294, both inclusive, and commissions due after said order on all non-can policies issued on all other forms, the holders of which accept their reinsurance and assumption by the New Company on the re-

1510 duced⁶ basis hereinafter provided in the agreement, shall be reduced in proportion to the reduction in disability benefits to the insured under such policies; and (b) the New Company shall not assume or be bound by⁶ any arrangement which the Old Company may have made with its agents regarding payment of commissions on policies after lapsation.

6. Treatment of Stockholders of Old Company.

1511 The stockholders of the Old Company shall be entitled to receive pro rata for a period of ten years commencing with the effective date of the agreement hereinafter set forth, the net earnings of the New Company derived from that portion of the business of its nonparticipating life, accident and health departments represented by policies of the Old Company assumed and reinsured by the New Company, remaining after the holders of non-can policies, who shall have
1512 elected to accept the assumption and reinsurance of their policies by the New Company on the reduced basis hereinafter provided in the agreement, shall have been restored to the benefits originally provided in their policies and certain depreciation reserves and additions to surplus shall have been established and made as hereinafter provided in the agreement, and after all finally allowed claims filed with the Commissioner as liquidator shall have been paid.

- 1513 At the end of said ten-year period, the New Company is to create a fund amounting to ten dollars per one thousand dollars of nonparticipating life insurance assumed and reinsured by the New Company, to which fund the stockholders of the Old Company shall be entitled pro rata, after restoration to non-can policyholders, establishment of reserves and surplus, and payment in full of allowed claims filed with the Commissioner as liquidator, as aforesaid. The New
- 1514 Company may at its option postpone the creation of said fund, but in such event the New Company shall pay an amount equal to interest on said fund at the rate of six per cent per annum until the principal of said fund shall be created, and such interest payments shall be distributed to the stockholders of the Old Company after the fulfillment of the conditions above referred to.

7. Mutualization of New Company.

- 1515 As soon as legally possible, the New Company and the Commissioner, as the holder of all of the outstanding stock of the New Company, shall prepare and present to the policyholders of the New Company a plan for its voluntary mutualization in accordance with the laws of the State of California, as then in effect. Such mutualization plan shall contain such terms and provisions not inconsistent with this plan and agreement, as may be required by law or approved by the Commissioner and the New Company. The purchase

1516 price paid by the New Company for the acquisition of its outstanding stock pursuant to such mutualization plan, to the extent not required for the satisfaction of item (c) of paragraph 4 above shall be repaid to the New Company.

AGREEMENT

The plan shall be consummated through the execution of the following agreement between the Insurance Commissioner of the State of California, as liquidator of the Old Company, 1517 as one party, and the New Company as the other party, and as to any inconsistency between the plan and the following agreement, the latter shall control:

Note: In lieu of the draft form of Rehabilitation, Sale and Transfer of Assets and Reinsurance Agreement attached to the Plan as originally proposed, there is attached hereto, in the words and figures following, a copy of the Amended Rehabilitation, Sale and Transfer of Assets and 1518 Reinsurance Agreement dated July 23, 1936, as executed.

REHABILITATION, SALE AND TRANSFER OF ASSETS AND REINSURANCE AGREEMENT

This Agreement, made and entered into this 23rd day of July, 1936, between Pacific Mutual Life Insurance Company, a California corporation, and Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, a California corporation,

1519

Witnesseth:

Whereas, an order was entered in the Superior Court of the State of California in and for the County of Los Angeles on the 22nd day of July, 1936, in a proceeding entitled "Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, Petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, Respondent," by which the court found that The Pacific Mutual Life Insurance Company of California was in such condition that its further transaction of business would be hazardous to its policyholders, creditors and to the public, and that said Company was insolvent within the meaning of Article 13, Chapter 1, Part 2, Division 1, of the Insurance Code of the State of California, and by which said order title to all of the assets of said Company, where-soever situated, was vested in Samuel L. Carpenter, Jr. in his official capacity as Insurance Commissioner, of the State of California, and by which order said Commissioner was directed forthwith to take possession of all of the books, records, property, real and personal, and assets of said Company and to conduct as conservator the business of said Company, and enjoining said Company and its officers, directors, agents, servants and employees from the transaction of its business or disposition of its property until the further order of said court, and pursuant to said order said Commissioner has become

1522 vested with the title to and did take possession of all of the books, records, property, real and personal, and assets of said Company; and

Whereas, said Commissioner as conservator as aforesaid, did thereafter apply to said court for an order for the liquidation of said Company and for an order directing the Commissioner to formulate and submit a plan and agreement of rehabilitation and reinsurance which, in the judgment of the Commissioner, would best preserve 1523 the value of the estate in liquidation, provide for the removal of the causes which made the proceeding necessary, and most fairly and equitably protect the rights and claims of all persons interested therein; and

Whereas, said court thereafter made and entered an order for the liquidation of said Company, appointing the Commissioner as liquidator thereof, and as such vested with title to all of the assets of said Company, and directing the 1524 Commissioner to file such a plan; and

Whereas, said Commissioner submitted to said court a Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement, alleging that said plan and agreement will preserve the value of the assets in liquidation, is fair and equitable to the policyholders, creditors and stockholders of said Company, and protects the legal rights of all interested parties as they now exist; and

1525 Whereas, thereafter said court made and entered an order approving said plan and agreement, and finding that said plan and agreement is fair and equitable and protects the existing legal rights of the policyholders, creditors, and stockholders of said Company, and directing that the Commissioner proceed to consummate said plan and execute this agreement;

Whereas, pursuant to said order last mentioned, Pacific Mutual Life Insurance Company
1526 and Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, made and entered into on July 22, 1936, a Rehabilitation Sale and Transfer of Assets and Reinsurance Agreement (hereinafter referred to as the original agreement), and

Whereas said original agreement provided in Paragraph 25 thereof that the same might be
1527 amended at any time while the Commissioner remains liquidator of The Pacific Mutual Life Insurance Company of California; by the consent of said Commissioner and of Pacific Mutual Life Insurance Company, subject to the approval of the court, and

Whereas said Commissioner remains liquidator of The Pacific Mutual Life Insurance Company of California and said Commissioner did on July 23, 1936, propose that Paragraph 15 of the

1528 original agreement be amended in certain respects and filed his petition with the court for the approval of such proposed amendment and for the approval of the execution of this agreement to provide for said amendment, and

Whereas Pacific Mutual Life Insurance Company has consented to said proposed amendment and the court has made its order under date of July 23, 1936, approving said amendment and the execution of this agreement;

1529 Now, Therefore, in consideration of the premises and of the respective undertakings of the parties hereto, it is hereby agreed that the above mentioned original agreement executed under date of July 22, 1936, shall be, and the same hereby is, amended so that Paragraphs 1 to 26, both inclusive, of said original agreement shall read in words and figures as hereinafter set out in Paragraphs 1 to 26, both inclusive, of this agreement, to-wit:

1530

Definitions

1. The parties to this agreement and the persons mentioned herein will be referred to and certain terms used herein are hereby defined as follows:

Samuel L. Carpenter, Jr., in his capacity as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and any successor Commissioner and liquidator, will be referred to as "Commissioner."

1531 The Pacific Mutual Life Insurance Company of California will be referred to as the "Old Company."

Pacific Mutual Life Insurance Company will be referred to as the "New Company."

The Superior Court of the State of California in and for the County of Los Angeles will be referred to as the "Court."

The date and hour of entry of said order of liquidation, to wit, July 22, 1936, at one o'clock P. M. Pacific Standard Time, will be referred to as the "date of liquidation."

This agreement shall be deemed to have been executed and shall be effective as of the date and hour of entry of said order of liquidation, and said date and hour will be referred to as the "effective date of this agreement."

1533 The phrase "assets of the Old Company" or any similar phrase used in this agreement shall be deemed to mean all books, records, property, real and personal, tangible and intangible, and all other assets of every kind, character and description whatsoever, and wheresoever situated, owned by the Old Company at the time of the appointment of the Commissioner as conservator which shall not have been applied by him against his subscription for stock of the New Company or disposed of by him in the due course of his administration as conservator or in his administration as liquidator of the Old Company, plus

1534 all property acquired by the Commissioner in either of said capacities and the income therefrom collected by him, except (a) the stock of the New Company held by him, and (b) any and all rights or claims of whatsoever nature which the Old Company or the Commissioner, in his capacity as liquidator of the Old Company, may have against any of the present or past officers, directors or employees, as such, of the Old Company, or against any other person, firm or corporation, by reason of wrongful or illegal acts or omissions of any of the past or present officers, directors or employees of the Old Company, including rights or claims on any fidelity or surety bond or bonds given to or in favor of the Old Company to secure the faithful performance by any of its officers, directors or employees of any of their duties as such.

1535 Outstanding policies of the Old Company known as its Non-Cancelable Income Policies, including the Aggregate form thereof, will be referred to as "Non-Can Policies."

Transfer of Assets

2. The Commissioner shall grant, bargain, sell, assign, convey, transfer, set over and deliver to the New Company the assets of the Old Company.

The Commissioner shall not be required to make manual delivery of any cash or securities deposited by the Old Company with any gov-

1537 ernmental authority as a condition to the conduct of its business, but shall only be required to assign his interest therein; subject to the terms of such deposit.

The Commissioner shall transfer and deliver to the New Company the full amount of all premiums paid to the Commissioner on any policy reinsured and assumed hereunder which have been paid in to the Commissioner on or after the date of liquidation, and the New Company 1538 shall credit the holder of such policy with the payment of such premiums accordingly, subject to repayment as hereinafter provided in the event the holder of such policy shall elect not to accept such reinsurance and assumption by the New Company. The New Company shall repay to the Commissioner upon demand any premium received by the New Company hereunder from the Commissioner which was paid by or on behalf of the insured after the date of liquidation to the 1539 Commissioner, if the policyholder has filed or shall file a claim in accordance with the Commissioner's notice requiring the filing of claims in the above mentioned cause, and the court shall direct the Commissioner to return the premium so paid.

Subsequent to the effective date of this agreement and for such period of time as the Commissioner may determine, no investment or reinvestment of the assets of the Old Company trans-

1540 ferred to the New Company pursuant to this agreement shall be made without first obtaining the written approval of the Commissioner. The Commissioner hereby agrees that said period shall in no event exceed six months from and after the effective date of this agreement.

Reinsurance and Assumption of Policies Other Than Non-Can Policies

1541 3. The New Company does hereby reinsure and assume, as of the date of liquidation, with the exception hereinafter provided, the liability of the Old Company under all life, endowment annuity and term policies and contracts of insurance, and all other policies and contracts of insurance, including, without limiting the same to health and accident benefits, waiver of premium disability benefits, permanent and total disability benefits, and all supplementary contracts, annuity contracts and all reinsurance contracts, issued or assumed by the Old Company and outstanding
1542 and in force on the books and records of the Old Company at the date of liquidation, subject, however, to any and all defenses, offsets, counter-claims, cross-complaints and rescission rights against said policies or contracts or against any claims and actions thereon, which would have been available to the Old Company had this agreement not been made; provided, however, that all outstanding Non-Can Policies are not reinsured or assumed under this paragraph and

1543 are hereby expressly excepted from the obligations of the New Company under this paragraph. The determination by the New Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the payment thereof shall be binding upon all persons so reinsured hereunder.

Reinstatement of Lapsed Policies

1544 4. The New Company will reinstate any policies heretofore issued, assumed or reinsured by the Old Company, which are not excepted from the obligations of the New Company contained in the foregoing paragraph and which at the date of liquidation, by their terms, were entitled to reinstatement, provided that all requirements necessary to procure a reinstatement of said policies under their terms are fulfilled to the satisfaction of the New Company.

1545 The New Company will also reinstate, during the lifetime of the insured and provided the insured is not in such condition as to be eligible for benefits under the policy, without evidence of insurability, any of said policies, with the aforesaid exception, which have lapsed since the date of liquidation, upon written application therefor by the insured and the payment of all premiums in arrears, if such application is made and premiums are paid within sixty (60) days after the effective date of this agreement. Upon the reinstatement of such lapsed policy it shall,

1546 for all purposes, be treated the same as if it had been in force on the date of liquidation and be subject to the terms and conditions of this agreement.

Payment of Policy Claims Other Than Claims
on Non-Can Policies

5. The New Company will pay in full, in accordance with the terms and conditions of the policies or other contracts under which the claims shall have been or may be made, and
1547 whether or not the claims arose or matured prior or subsequent to the date of liquidation, all claims (except claims on Non-Can Policies) including, without limiting the same to, claims for death benefits, matured endowments, annuity payments, permanent total disability and premium waiver benefits, accident and sickness benefits, payments under policy settlement agreements, policy dividends left at interest with the Old Company prior to the date of liquidation, and payments
1548 under all other matured contracts under which the proceeds of policies and contracts were left with the Old Company prior to the date of liquidation; subject, however, to any and all defenses, offsets, counter-claims, cross-complaints and rescission rights against any such claim or claims which would have been available to the Old Company had this agreement not been made.

1549 Reinsurance and Assumption of Non-Can
Policies

6. The New Company does hereby reinsure and assume, as of the date of liquidation, the liability of the Old Company under all Non-Can Policies issued by the Old Company and outstanding and in force on the books and records of the Old Company at the date of liquidation, subject, however, to the terms, conditions and limitations, and only to the extent hereinafter
1550 specifically provided and subject, further, to any and all defenses, offsets, counterclaims, cross-complaints, and rescission rights against such policies or any claims and actions thereon which would have been available to the Old Company had this agreement not been made. The determination by the New Company as to the validity of any policy claim on policies reinsured and assumed under this paragraph and the payment thereof shall be binding upon all persons so re-
1551 insured hereunder.

Terms, Conditions, Limitations and Extent of
Reinsurance and Assumption of
Non-Can Policies

7. The obligation of the New Company with respect to the payment of monthly disability benefits on claims either filed or notice of which is filed with the New Company or any of its predecessors at any time after the date of liquidation under Non-Can Policies reinsured and as-

1552 ~~sumed under the preceding paragraph, subject to restoration as provided in paragraph 8^a hereof, shall be limited to payment of the following percentages of the monthly disability benefits originally provided under said policies, according to the following premium classes, respectively:~~

	Premium Class of Policy	Percentage of Original Monthly Benefit Assumed by New Company
1553	1918 Premium class Issued under Rate Books: A 1445, A 1445 Z, A 1445 Y, A 1445 X and A 1445 W. in period from: August, 1918—September, 1921	20%
	1921 Premium class Issued under Rate Books: A 1687, A 1687 Z, A 1687 Y, A 1687 X, A 1687 W. in period from: September, 1921—July, 1926.	35%
1554	1926 Premium class Issued under Rate Books: A 1958, A 1958 Z, A 1958 Y, in period from: July, 1926—February, 1929.	45%
	1929 Premium class Issued under Rate Books: A 2293 in period from: February, 1929—January, 1931.	55%

1555 1931 Premium class

Issued under Rate Book:

A 2367

65%

in period from:

January, 1931—March, 1932.

1932 Premium class

Issued under Rate Books:

A 2432, A 2432 Z, A 2499

90%

in period from:

March, 1932—February, 1935.

Aggregate policy

1558

Issued under Rate Books:

A 2499, A 2567

90%

in period from:

October, 1933—July, 1935,

Note: All of the above mentioned Rate Books are Rate Books issued by the Old Company and copies are on file at the office of the New Company at 523 West Sixth Street, Los Angeles, California, and in the offices of the Insurance Commissioners or similar public officials of each state in which the Old Company has been transacting insurance business.

1557

Notwithstanding the foregoing limitation on the obligation of the New Company to make monthly disability payments on such policies, there shall be no change or reduction in the original premium rates on such policies, and to be entitled to the reinsurance and assumption of his Non-Can Policy by the New Company as aforesaid, the policyholder shall be obligated to continue to make premium payments at the rate originally provided in his policy.

1558

Restoration of Non-Can Benefits

8. The New Company shall be obligated to restore the monthly disability benefits originally provided in the Non-Can Policies reinsured and assumed under this agreement by applying, and only by applying, to such extent and in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance Commissioner of the State of California as hereinafter provided, sums equivalent

1559 to the following:

(a) The net profits derived by the New Company from that portion of the business of its accident and health department represented by accident and health policies reinsured and assumed under this agreement, including all Non-Can Policies so reinsured and assumed hereunder; and

1560

(b) The net profits derived by the New Company from that portion of the business of the nonparticipating branch of its life department represented by nonparticipating life insurance policies reinsured and assumed hereunder.

As of December 31, 1938, and tri-annually thereafter or at the time of the regular examination of the New Company by the Insurance Commissioner of the State of California, the New Company shall render to such Commissioner an accounting of the net profits, if any, arising from the sources referred to in (a) and (b)

1561 above, including the New Company's proposal as to the extent and manner of the application of sums equivalent to such net profits to the restoration of benefits on said Non-Can Policies. Any such proposal may include provision for proportionate restoration of commissions to agents, who through accepting the assumption of their contracts on the basis hereinafter provided, have received less commissions on such policies than they otherwise would have received. After the 1562 approval of any such proposal by said Commissioner with such changes as he may require therein, the New Company shall proceed to put said proposal into effect. The extent and manner of the restoration, as provided in any such proposal so approved by said Commissioner, shall be binding upon all holders of said Non-Can Policies and other persons interested therein.

The holders of any such Non-Can Policies surrendered to the New Company in connection 1563 with any settlement thereunder shall not be entitled thereafter to any of the benefits of such restoration.

The holders of any such Non-Can Policies which shall have lapsed after the date of liquidation and which shall not have been reinstated either in accordance with their terms or in accordance with the provisions of this agreement, shall not be entitled thereafter to any of the benefits of such restoration. D

1564 Reinstatement of Lapsed Non-Can Policies

9. The provisions of paragraph 4 of this agreement with respect to reinstatement of lapsed policies shall apply to Non-Can Policies, subject to the terms, conditions and limitations contained in paragraphs 6 and 7 hereof.

Payment of Claims on Non-Can Policies Filed Prior to Date of Liquidation

1565 10. The New Company shall be obligated to continue the payment of all disability benefits under Non-Can Policies, claims or notices of claims for which had been filed with the Old Company prior to the date of liquidation, and all payments under settlement agreements made by the Old Company with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such Non-Can Policies, and subject to any such settlement agreements; and subject, **1566** further, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company had this agreement not been made.

Moratorium

11. The reinsurance and assumption of obligations by the New Company herein provided for are subject to the condition that the New Company shall not be required, prior to sixty (60)

1567 days, and such additional period as may be determined by the Commissioner, from and after the effective date of this agreement, to make policy loans (except for the purpose of paying premiums on the same policy or on additional policies issued on the same life), or to pay cash surrender values. This provision, however, shall not apply to any increase in values that are accumulated from premium payments or loan repayments which are received subsequent to the date of liquidation.

During such period as the moratorium is in effect the cash surrender option of all policies of the Old Company may be considered as non-existing, except as provided above, and all policyholders, who do not pay their premiums and who are entitled to a guaranteed value will be restricted to the automatic nonforfeiture value (properly adjusted for any policy indebtedness and accrued interest thereon) under the policy.

1569 At the discretion of the New Company, however, the cash surrender value under any policy, properly adjusted for any policy indebtedness and accrued interest thereon, may be allowed whenever it appears, in the sole judgment of the New Company, that the granting of such surrender value will be to the advantage and benefit of the Old Company policyholders as a class.

1570 Assumption of Claims Against Old Company

12. The New Company hereby assumes and agrees to pay the following:

(a) All costs and expenses of the Commissioner in his capacities as conservator or liquidator of the Old Company, including attorneys' fees, as finally approved by the court;

1571 (b) All unpaid taxes legally due the United States, the State of California, and other States, and Counties and Municipalities thereof, in connection with the business and assets of the Old Company, and remaining unpaid;

(c) Wages and salaries legally due to persons employed by the Old Company for services rendered and current bills for office supplies and incidental expenses in connection with the operation of the business of the Old Company and remaining unpaid;

1572 (d) All claims against the Old Company filed with the Commissioner as liquidator, and finally allowed by the Commissioner and/or by the Court.

The obligation of the New Company with respect to items (a), (b), (c) and (d) above shall be to pay the same, in the order of preference established by law, and shall be limited, in the aggregate, to a amount equal to the value of the assets of the Old Company transferred to the New Company pursuant to this agreement, on the basis of valuation provided in paragraph 13

1573 of this agreement, less the amount of the reserves established by the New Company, with the approval or in accordance with the requirements of the Commissioner, with respect to policies of the Old Company reinsured and assumed by the New Company hereunder, and with respect to policy claims assumed by the New Company hereunder.

Valuation of Assets Transferred to New Company

1574 13. The assets of the Old Company transferred to the New Company pursuant to this agreement shall be valued at the amounts established therefor in the so-called "Convention Report" made in 1936 by the Commissioner and similar officials of certain other states in which the Old Company did business, with respect to the condition of the Old Company, as of December 31, 1935.

Agents

1575 14. The New Company hereby assumes, subject to the limitation and exception hereinafter stated, any obligations under any contract heretofore made by the Old Company with any agent (regardless of classification), manager, or supervisor, it being recognized that the services of the agents who produced, or under whose direction or supervision was produced, the business reinsured or assumed hereunder in servicing said business, and the maintaining of same in force is to the ultimate interest and advantage of the policyholders of the Old Company. How-

1576 ever, the obligations of the Old Company to pay commissions on Non-Can Policies reinsured and assumed by the New Company, with the limitations as to disability benefits hereinbefore provided, shall be reduced as follows: (a) No commissions due after the date of liquidation shall be paid on Non-Can Policies on all forms issued prior to and including Forms A291 to A294, both inclusive, and (b) commissions due after the date of liquidation on all Non-Can Policies
1577 issued on all other forms, the holders of which accept the reinsurance and assumption of their policies by the New Company on the reduced basis hereinbefore provided, shall be reduced in proportion to the reduction in disability benefits to the insured under such policies. The New Company shall not assume, or be bound by any agreement which the Old Company may have made with agents with respect to payment of commissions on policies after lapsation. To such
1578 extent, in such manner and at such time or times as may be proposed by the New Company and approved by the Insurance Commissioner of the State of California, as provided in paragraph 8 of this agreement, the New Company shall apply its net profits derived from the sources referred to in (a) and (b) of said paragraph 8 to the restoration to agents of the amounts of the reduction in their commissions on policies referred to in (b) of this paragraph to which said agents would have otherwise been entitled.

1579 Additional Payments on Allowed Claims and Payments to Stockholders of Old Company

1580 15. For a period of ten (10) years commencing January 1, 1937, the New Company shall pay to the Commissioner for the benefit of holders of claims filed with the Commissioner and finally allowed by him or by the court, until such claims shall have been paid in full, and thereafter for the benefit of and distribution to the stockholders of the Old Company, the net profits of the New Company derived from the sources referred to in (a) and (b) of paragraph 8 of this agreement remaining after:

(a) The holders of Non-Can Policies referred to in said paragraph 8 shall have been restored to the full benefits originally stated in their policies as provided in said paragraph; and

1581 (b) The New Company shall have established such reserves as may be deemed necessary by the New Company and the Commissioner for proper depreciation of the assets allocated to, or held by, the New Company for the benefit of the departments referred to in (a) and (b) of said paragraph 8; and

(c) Restoring to surplus allocated to the participating life department of the New Company the sum of \$1,792,118.97, or its equivalent, together with interest thereon to date of restoration at the average rate earned by the New Company during such period on its invested assets; and

1582 (d) Creating a reserve or adding to the surplus of the New Company an amount equal to the amount of policy reserve for Non-Can Policies released by reason of lapsation of such policies reinsured and assumed hereunder in excess of a lapse rate of ten per cent (10%) per year, or occasioned by substitutions or exchanges of such policies for other types of accident or health insurance.

At the end of said ten (10) year period, to-
1583 wit, on January 1, 1947, the New Company shall either (1) create a fund equal to \$10 per \$1000 of nonparticipating life insurance reinsured and assumed by the New Company under this agreement and then remaining in force, or, (2) until said fund shall be so created, pay an amount equal to interest at the rate of six per cent (6%) per annum on an amount equal to said fund computed as aforesaid, which fund, and, until the creation thereof, said interest payments,
1584 shall be applied, first, to the extent necessary to complete the restoration and establishment of reserves referred to in (a), (b), (c) and (d) above, and, second, to the payment to the Commissioner to the extent necessary to pay any unpaid balance of claims filed with the Commissioner and finally allowed, and thereafter to distribution pro rata to the stockholders of the Old Company.

Any such payments to stockholders of the Old Company, in accordance with the foregoing, shall

- 1585 either be made pro rata to such stockholders, as their interests may appear according to the stock ledgers of the Old Company, or the New Company may issue to the Commissioner or to such stockholders appropriate certificates of the New Company evidencing its obligation to make such payments. Such certificates of interest may either be issued by the New Company to the Commissioner for distribution by him to stockholders of the Old Company in exchange for their stock
- 1586 certificates, or, at the election of the New Company, may be issued by the New Company directly to such stockholders upon the surrender of their stock certificates.

Mutualization of New Company

16. The New Company hereby consents to such plan for its voluntary mutualization in accordance with the laws of the State of California as now in effect or hereafter amended, as may be proposed by the Commissioner, as soon as
- 1587 legally possible; and the Commissioner agrees to propose such mutualization plan, as the holder of the stock of the New Company. Such mutualization plan shall contain such terms and provisions, not inconsistent with this agreement, as may be required by law or approved by the Commissioner and the New Company. The purchase price paid by the New Company for the acquisition of its outstanding stock pursuant to such mutualization plan to the extent not required by the Commis-

1588 sioner as the holder of said stock for the satisfaction of claims against the Old Company, filed with the Commissioner and finally allowed, shall be repaid by the Commissioner to the New Company.

Notice

1589 17. The New Company shall mail promptly to the insured named in all policies and supplementary contracts of the Old Company in force at the date of liquidation, and any assignees thereof of record, a printed copy of the Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan concerning the Old Company, including a copy of this agreement as executed, to which the New Company may attach its certificate of reinsurance and assumption, inserted in an envelope, first class postage prepaid, addressed to the name and address of each of the persons aforesaid last shown upon the records of the Old Company. By "assignees of record" 1590 is meant assignees appearing upon the records of the Old Company at its Home Office.

Election of Policyholders and Claimants and Effect Thereof

18. Each policyholder and policy claimant of the Old Company may elect either to accept the reinsurance and assumption of his policy or contract and/or any claim thereunder by the New Company, as provided in this agreement, or to file his claim against the Old Company with the

- 1591 Commissioner, in the manner provided by the Insurance Code of the State of California with respect to the filing of claims against an insurer in the process of liquidation. Persons so filing claims, who shall not withdraw them as hereinafter provided, ~~are~~ herein referred to as dissenting policyholders. The filing of a claim by any dissenting policyholder shall remove the policy or contract in respect of which said claim shall be filed, and the claim of persons under such
- 1592 policy or contract from the benefit of the provisions of this agreement with respect to reinsurance and/or assumption, and shall constitute an irrevocable election, on the part of such policy or contract holder, and his beneficiary and all persons claiming under him, not to accept ~~the~~ benefit of such reinsurance and/or assumption provisions unless such claim shall be withdrawn by the claimant at any time prior to the expiration of sixty (60) days from and after the date
- 1593 of the expiration of the time for filing claims, as provided by law, with the written consent of the New Company, in which event such policy or contract, and the persons interested in the benefits thereunder, shall be entitled to the benefit of such reinsurance and/or assumption provisions and shall be bound by this agreement.

Every person entitled to accept any benefit under this agreement, who shall have indicated his election so to do either by not filing any such claim, or by withdrawing such claim if filed,

- 1594 shall be considered as assigning to the New Company, all his claims against the Old Company, and the benefits of any rights, securities, liens, or preferences to which he may be entitled by reason of his claims and also as so assigning all interest to which his claims may entitle him in all of the assets of the Old Company, whether located in California or elsewhere. The New Company shall be entitled to assert and prosecute its claims, securities, liens or preferences of all
- 1595 holders of policies or contracts, issued or assumed by the Old Company, who so assent to or become bound by the provisions of this agreement, and the New Company shall be entitled to assert and obtain in such manner as it may deem best, any rights, securities, liens, or preferences to which the holders of policies or contracts issued or assumed by the Old Company, who shall so assent to or become bound by the provisions of this agreement, would have had.
- 1596 Each holder of any policy or contract issued or assumed by the Old Company, who shall not have filed his claim against the Old Company with the Commissioner in the manner and within the period required by law, shall be deemed ipso facto to have assented to and become bound by the provisions of this agreement, and entitled to the benefits hereof, subject to all of its terms. No holder of any such policy or contract of the Old Company who shall be deemed to have assented to or become bound by the provisions of

1597 this agreement shall have any rights, securities, liens, or preferences not accorded by this agreement.

Right of the ~~New Company~~ to Prosecute and
Defend Claims

1598 19. All claims or demands against the Old Company or its property now the subject of litigation in any court of competent jurisdiction in actions against the Old Company, and any and all claims and demands against the Old Company or its property filed with the Commissioner as liquidator, may be prosecuted and defended until final judgment, and the New Company shall have the right to assist and join in such defense through counsel selected and paid by the New Company, and with all defenses, offsets, counter-claims, cross-complaints and rescission rights that might or could have been available to it, the Old Company, or to the Commissioner as liquidator, including all rights of appeal or review in what-
1599 soever form.

Right of New Company to Settle or Pay Claims
Against Old Company

20. In order that claims against the Old Company may be disposed of as speedily and economically as possible, the New Company shall have the right, with the approval of the Commissioner, to settle, compromise or compound any claim or demand against the Old Company or its property, whether or not such claim or demand shall have

1600 been filed with the Commissioner and to pay in discharge thereof such amount as may be mutually agreed upon, and if such claim or demand shall not have been so filed, with like force and effect as if such claim or demand had been duly filed with the Commissioner and finally allowed as above set forth; provided, that no such settlement, compromise or compounding shall affect the right of the New Company to contest and litigate any other claims or demands of similar
1601 character.

Withholding of Assets

21. In the event of the institution of primary receivership or other proceedings in any of the states other than the State of California, wherein the Old Company had assets and in which proceedings the assets located in any such state are liquidated and distributed exclusively to policyholders, creditors, stockholders or other persons resident of said state, such policyholders, creditors, stockholders and other persons interested
1602 in assets of the Old Company, who accept in any such proceeding their pro rata share of the distribution of the assets of the Old Company located in said state, shall not be entitled to the benefits provided in this agreement.

Interpretation of Agreement and Accountings Thereunder

22. In the event of any dispute between the New Company and any person entitled to or who

1608 has elected to accept the benefits of this agreement, the determination by the Commissioner as to the interpretation of this agreement shall be conclusive and binding upon both parties to any such dispute. The accounting methods or procedure of the New Company in computing any net profits, earnings or other amounts under this agreement and the amount and character of any and all reserves which may be established by the New Company under this agreement or in the
1604 course of its operations following the execution of this agreement, shall be subject to the approval of the Commissioner; and all such accounting matters and computations and amounts and characters of reserves when so approved by the Commissioner shall be conclusive and binding upon the New Company and all persons entitled to any benefit under this agreement, including, but not limited to, persons who may have elected to file their claims with the Commissioner as liquidator.

1605

Commissioner Not Personally Liable

23. The Commissioner is bound by the provisions of this agreement only in his capacity as such Commissioner and as conservator or liquidator of the Old Company. All undertakings and obligations herein set forth as undertakings or obligations of the Commissioner are made by the Commissioner only in his said capacities and to such extent as he had authority to make the same, and the Commissioner makes no warranty

1606 of his authority to make the same. No personal liability on the part of the Commissioner is assumed under this agreement.

Liabilities of New Company Limited by This Agreement

24. It is understood that the New Company does not assume any liability to any stockholders of the Old Company in any way arising out of or by virtue of their stock holdings in the Old Company, nor any liability of any character or
1607 description to creditors of the Old Company, whether policyholder creditors or others, except as and to the extent provided in this agreement; it being specifically understood that the New Company does not assume any liability of any character or description whatsoever of the Old Company except as and to the extent in this agreement expressly provided, and the provisions of this agreement shall be a complete and adequate defense by the New Company to any action, other than an action to enforce the express
1608 provisions of this agreement, which may be brought by such stockholders or creditors above mentioned.

Amendments

25. This agreement may be amended at any time while the Commissioner remains liquidator of the Old Company, by the consent of the Commissioner and the New Company, subject to the approval of the court.

1609

Assignability of Agreement

26. This agreement and all rights, duties and obligations hereunder, shall inure to the benefit of and be binding upon the respective parties hereto, their several successors and assigns.

The original agreement, as hereby amended, is ratified, confirmed, approved and continued in full force and effect.

1610

In Witness Whereof, the New Company has caused this agreement to be executed by its president or vice president, attested by its secretary, and its corporate seal to be hereunto affixed, and the Commisisoner has executed this agreement, the day and year first above written.

PACIFIC MUTUAL LIFE INSURANCE COMPANY,

By ASA V. CALL

[Corporate Seal]

Its Vice-President

Attest: T. RUSSELL HARRIMAN, JR.

Its Secretary

• 1611

"New Company"

SAMUEL L. CARPENTER, JR.

As Insurance Commisisoner of the State of California and liquidator of The Pacific Mutual Life Insurance Company of California.

"Commisisoner"

Endorsed: Filed Aug. 14, 1936, at 11:15 a. m. L. E. Lampton, county clerk; by A. G. Stanham, deputy.

1612 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the state of California, petitioner, v. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Pacific Mutual Life Insurance Company, intervenor.

1613 C. N. Wesley, L. S. Larson, E. H. Miller and George W. Struckman, for themselves and all other persons similarly situated, intervenors.
No. 404673.

*** Proposed Complaint in Intervention.**

Now comes C. N. Wesley, L. S. Larson, E. H. Miller and George W. Struckman, by Latham, Watkins & Bouchard, their attorneys, for themselves and on behalf of all persons, and, in particular, policy holders of respondent herein, The Pacific Mutual Life Insurance Company of California, a corporation, similarly situated, file this, **1614** their complaint in intervention herein by leave of this court and for intervention allege as follows:

I.

That, as appears more fully herein, the issues arising hereby raise questions of and are matters of great public interest.

II.

That, except as otherwise set forth herein, at all times mentioned herein:

1615 (a) The Pacific Mutual Life Insurance Company of California was and is a corporation incorporated under the laws of the state of California and has had and still has its principal office and place of business in the city of Los Angeles, county of Los Angeles, state of California; and that, for brevity, said corporation is hereinafter referred to as respondent or as Old Company.

1616 (b) That from and after the time more specifically set forth herein, Pacific Mutual Life Insurance Company has been and still is a corporation incorporated under the laws of the state of California, and having its principal office and place of business in said city of Los Angeles; and that, for brevity, said corporation is hereinafter referred to as New Company.

1617 (c) That at all times mentioned herein, Samuel L. Carpenter, Jr., was and now is purporting and pretending to act as Insurance Commissioner of the State of California pursuant to the provisions of the Insurance Code of the state of California; and that, for brevity, said person is hereinafter referred to as petitioner.

III.

That at all times mentioned herein, said Old Company was authorized to issue, and did issue, a type of policy of insurance known as Non-Cancellable Health and Accident Policy; that said type of policy has been issued to thousands

1618 of persons and that thousands of said policies are still outstanding in the hands of the lawful holders and owners thereof, who have paid all of the premiums required thereunder and otherwise have duly kept and performed all of the provisions and obligations of said policies on their part to be kept and performed.

IV.

Said intervening plaintiffs, C. N. Wesley, L. S. Larson, E. H. Miller and George W. 1619 Struckman, at all times mentioned herein were and still are the holders and owners of such type of policy; that each of said intervening plaintiffs has paid all of the premiums required under the terms and provisions of said policy and has otherwise duly kept and performed all of the provisions and obligations thereof on their part to be kept and performed.

V.

1620 That heretofore, to-wit, on or about the 22nd day of July, 1936, the above-entitled action or proceeding was commenced in the above-entitled court by said Samuel L. Carpenter, Jr., purporting and pretending to act as Insurance Commissioner of the State of California, as petitioner, against The Pacific Mutual Life Insurance Company of California, a corporation, as respondent, with the knowledge and consent of said respondent, for the purpose of having petitioner authorized, pursuant to certain provisions

1621 of the Insurance Code of the state of California, to be appointed conservator of respondent, to work out a rehabilitation and/or reinsurance plan or agreement concerning said respondent, and, if that should prove to be impracticable, then to wind up and liquidate said respondent.

VI.

That thereafter and prior to the filing of this complaint in intervention, this court, with the knowledge and consent of said respondent, made
1622 certain orders and entered certain judgments and decrees herein, all of which appear more fully in the pleadings, records, files, minutes, orders, judgments, decrees and proceedings herein (which said pleadings, records, files, minutes, orders, judgments, decrees and proceedings are hereby incorporated herein in their entirety by reference thereto the same as though set forth herein *in haec verba*); that, purporting to act pursuant to and under the authority of said
1623 orders, judgments, and decrees, and the terms and provisions of said Insurance Code, and, in particular, the provisions of division 3, and of article 13 of chapter 1, of part 2, of division 1 thereof, the said petitioner, with the knowledge and consent of said respondent, proceeded to incorporate a new corporation under the laws of the state of California, to-wit, said New Company, and to transfer to said New Company all of the assets of said respondent, including all insurance policies in the life department and

1624 accident department of said respondent except said policies described in paragraph III hereof; that said court has confirmed said sale, with the knowledge and consent of said respondent, but that said new company has intervened herein and is seeking to have said sale further confirmed and its title to said assets quieted, and to have any and all objectors to such sale given an opportunity to make and present their objections.

VII.

1625 That each of the intervening plaintiffs herein, including in and by such designation all persons similarly situated to said plaintiffs, is a holder of such a policy, as same is more particularly described in paragraph III hereof.

VIII.

1626 That the sale of the assets of the Old Company to the New Company, as aforesaid, has left said Old Company without assets and means of paying any of said policies as same mature, according to the terms and provisions thereof, and from continuing same in full force and effect, or at all; that said New Company has offered to reinsure said policies only upon condition that the holders thereof, intervening plaintiffs among them, submit to a drastic and unwarranted reduction in the benefits payable thereunder, such reductions ranging in amount to from eighty per cent to ten per cent thereof; that unless the acts of said court and of said petitioner, as set

1627 forth herein, particularly in paragraphs V and VI and this paragraph, are set aside and nullified and the assets of said Old Company which were transferred to said New Company, as aforesaid, are restored to said Old Company, said Old Company will be unable to keep said policies in full force and effect, or at all, according to the terms and provisions thereof.

IX.

1628 That intervening plaintiffs herein allege upon information and belief that they can not purchase in any other company this type of insurance on as favorable terms as those contained in the policies now owned by them in said respondent company.

X.

1629 That, by reason of the premises above set forth, intervening plaintiffs and all others similarly situated, have no speedy and adequate remedy at law, and that unless said Old Company is restored to a position where it can continue said policies, as set forth in paragraph VIII hereof, intervening plaintiffs and all others similarly situated will suffer irreparable damage and harm.

XI.

That the acts, orders, judgments and decrees of said court herein, and the acts of said petitioner, and of said Old Company, and of said New Company, as set forth herein, and, in particular, in said paragraphs V, VI and VIII

1630 hereof, are unlawful, void, and of no force and effect for the reason that at no time mentioned herein has said Old Company been insolvent within the terms and provisions of said Insurance Code of California, and, in particular, of articles 13 and 14 of chapter 1 of part 2 of division 1 thereof; and, in this connection, intervening plaintiffs further allege, on information and belief, that a few days prior to the 22nd
1631 day of July, 1936, Occidental Life Insurance Company, a California corporation, offered to purchase from said Old Company all of said Old Company's assets, including said policies, and to keep said policies in full force and effect according to the terms and provisions thereof, offering for said assets the sum of ten million dollars (\$10,000,000.) which sum it was then and there willing and able to pay; that said offer
1632 has not been withdrawn but may still be accepted; that petitioner valued the assets of said Old Company at three million dollars (\$3,000,000.00) in the said sale and transfer thereof to said New Company, and effected said sale and transfer at said valuation; that said figure of three million dollars was far below the actual value or market value of said assets, and that the actual value or market value thereof is ten million dol-

1633 lars, or more; that if the sale and transfer of said assets from said Old Company to said New Company is set aside and the sale of said assets to said Occidental Life Insurance Company is authorized and effected, all of said policies can be and will be continued in full force and effect, according to the terms and provisions thereof, by said Occidental Life Insurance Company.

XII.

1634 That the facts set forth in paragraph XI hereof were known to said petitioner and to said Old Company at the times mentioned and described in paragraphs V, VI and VIII hereof, and to said New Company at the time of and since its incorporation and its acquisition, as aforesaid, of the assets of said New Company; that said facts were not known to said court, but, upon information and belief, that same were
1635 kept from the knowledge of said court by said petitioner, and said Old Company and said New Company; and that the acts of petitioner and said Old Company and said New Company, as heretofore set forth herein, were done for the sole purpose of effecting a means or method by which said policies could and would be cancelled and intervening plaintiffs and others similarly situated would be deprived of the benefits thereof.

1636

XIII.

That all of the acts, orders, judgments and decrees of this court and the acts of said petitioner and of said Old and New Companies, hereinabove set forth or referred to were and are null and void under section 1 of the Fourteenth Amendment to the Constitution of the United States, and under section 16 of article I of the Constitution of the state of California.

1637

XIV.

That if the Insurance Code of the state of California, and, in particular, division 3 and articles 13 and 14 of chapter 1 of part 2 of division 1 thereof, authorized, or shall be construed or deemed to authorize, the acts, orders, judgments and decrees of said court and/or the acts of said petitioner and/or the acts of said Old Company and/or the acts of said New Company, then said Insurance Code, and, in particular, the portion thereof specifically referred to, are illegal, null and void, and of no force and effect, in that each of them is in conflict with and contrary to, and is forbidden by section 16 of article I of the Constitution of the state of California and by section I of the Fourteenth Amendment to the Constitution of the United States.

1638

1639 Wherefore, intervening plaintiffs demand judgment as follows:

1. Vacating, setting aside and declaring null and void and of no force and effect, each of the acts, orders, judgments and decrees herein of the court which authorized, directed, or confirmed the several acts of said petitioner and of said Old Company and of said New Company, as same are more particularly described, directly
1640 or by reference, in the complaint for intervention.

2. Vacating, setting aside and declaring null and void and of no force and effect, each of said acts of said petitioner and of said Old Company and of said New Company.

3. For such other and further order, judgment, decree and relief as shall be just or necessary in the premises.

1641

LATHAM, WATKINS & BOUCHARD,

By GEORGE BOUCHARD,

Attorneys for Intervening Plaintiffs.

Verified.

Endorsed: Filed Aug. 17, 1936, 2:15 p. m.
L. E. Lampton, county clerk; by J. MacGregor,
deputy.

1642 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. Pacific Mutual Life Insurance Company of California, a corporation, respondent; Wm. H. Neblett, intervenor. No. 404673.

Answer to Complaint in Intervention of Wm. H. Neblett.

1643

Come now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company and answer the complaint in intervention of Wm. H. Neblett, as follows:

I.

1644

Admit that said Samuel L. Carpenter, Jr., is, and at all times since a time long before the commencement of these proceedings has been, Insurance Commissioner of the State of California and is acting as such, and that he was appointed Insurance Commissioner by the Governor of the State of California. All other allegations, charges and inferences contained in the paragraph in said complaint in intervention numbered IV are denied.

1645

II.

Answering the paragraph numbered V, it is admitted that said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, instituted these proceedings on or about the 22nd day of July, 1936. All other allegations, charges and inferences in said paragraph contained are denied:

III.

1646

Answering paragraph VI, deny that the proceedings taken by said Insurance Commissioner were taken in accordance with the alleged plan and scheme referred to in said paragraph VI. Deny that the showing made to the court that said Old Company was insolvent within the terms and provisions of the Insurance Code of California was or is false. Deny that all or any of the orders made by said court were induced by a false representation.

1647

IV.

Deny all the matters and things alleged in the paragraphs in said complaint in intervention numbered VII, VIII, IX, X and XI.

1648 Wherefore, these answering parties pray that said complaint in intervention be dismissed, and for all other proper relief in the premises.

U. S. WEBB,

Attorney General,

By JOHN L. FLYNN,

Deputy Attorney, General,

Attorney for Samuel J. Carpenter, Jr., as Insurance Commissioner of the State of
1649 *California.*

ASA V. CALL,

O'MELVENY, TULLER & MYERS,

By ASA V. CALL,

Attorneys for Pacific Mutual Life Insurance Company, Intervenor.

Verified.

Endorsed: Received copy of the within
1650 answer this 18 day of August, 1936. R. D. Warner, attorney for intervenor.

Filed Aug. 18, 1936. L. E. Lampton, county clerk; by E. T. Crozier, deputy.

1651 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, respondent.

Pacific Mutual Life Insurance Company, intervener.

1652 Carl C. Katleman, appearing for himself and all others similarly situated, intervener. No. 404673.

Answer of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company to Petition of Intervention by Carl C. Katleman, for Himself and All Others Similarly Situated.

1653 Comes now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, hereinafter called "Commissioner," and Pacific Mutual Life Insurance Company, a California corporation, hereinafter called "the New Company," and for their answer to the petition in intervention hereinabove referred to, admit, deny, and allege as follows:

1654

I.

Admit the allegations of paragraph I of said petition, excepting that ~~they~~ deny that said policies therein mentioned are at this time in full force or are at this time very valuable, and excepting that they have no information or belief sufficient to enable them to answer, and on that ground deny, the allegation that it would be impossible for petitioner to replace said policies in
1655 any company that is writing insurance of this type.

II.

1656

Admit the allegations of paragraph II of said petition, except that they deny that the policies therein mentioned are at this time in full force or very valuable, and except that they have no information or belief sufficient to enable them to answer, and on that ground deny, the allegations
1656 as to the residence of the parties named therein, and the allegation that each or any of said parties have requested petitioner to appear for and represent them at this or any hearing, and the allegation that it would be impossible to replace the policies therein mentioned in any company writing this type of insurance.

1657

III.

Deny generally and specifically each and all the allegations contained in paragraphs IV, V and VI of said petition.

IV.

1658

Deny generally and specifically all of the allegations of paragraph VII of said petition, except that they admit that a report has been issued to the Insurance Commissioner of the State of California and to the Insurance Commissioners of certain other states by certain examiners wherein it is set forth as follows:

1659

"While the difficulties in which this Company finds itself is due principally to inadequate rates on non-cancellable accident and health policies a considerable portion could have been alleviated by the executive officers of the Company following the advice of the Company Actuaries as early as 1926, when they advised that the basis of calculation of non-cancellable accident and health reserves was inadequate."

"Also, considerable money was lost through a stock syndicate for employees and the making of loans to companies in which certain of the officers were interested.

"These matters should all be investigated."

1660

V.

Deny each and all the allegations contained in paragraph VIII of said petition, except that they have no information or belief sufficient to answer, and on that ground deny, the allegation that in reports heretofore issued by Bests, certain charges have been made with reference to certain investments made by the officers and directors of respondent that resulted in large losses to respondent.

VI.

Deny each and all the allegations of paragraph IX of said petition, except that they admit and allege that not more than seven of the persons who were officers and directors of respondent are now officers and directors of the New Company.

VII.

1662 Deny each and all the allegations contained in paragraph X of said petition, except that they admit that dividends were paid to the stockholders of respondent corporation to and including the 2nd day of January, 1935, and admit that salaries have been paid to the officers of respondent during the past ten years.

VIII.

Deny generally and specifically each and all the allegations contained in paragraph XI of said petition.

IX.

1663

Deny generally and specifically each and all the allegations contained in paragraph XII of said petition.

Wherefore, Commissioner and the New Company pray that they have judgment; that petitioner Carl C. Katleman take nothing by his said petition; and that Commissioner and the New Company have their costs and disbursements herein.

1664

U. W. WEBB,

Attorney General,

By JOHN L. FLYNN,

Deputy Attorney General,

*Attorney for Samuel L. Carpenter, Jr., Insurance
Commissioner of the State of California.*

ASA V. CALL,

1665

O'MELVENY, TULLER & MYERS,

By HOMER I. MITCHELL,

*Attorneys for Pacific Mutual Life Insurance
Company, Intervener.*

Verified.

Endorsed: Filed Aug. 18, 1936. L. E. Lamp-
ton, county clerk; by E. T. Crozier, deputy.

1666 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Pacific Mutual Life Insurance Company, intervenor, R. Rabinowitz, intervener. No. 404673.

1667 Answer of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company to Complaint in Intervention of R. Rabinowitz.

1668 Come now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company, a California corporation, hereinafter called "the new company", and for their answer to the complaint in intervention hereinabove referred to, admit, deny and allege as follows:

I.

Allege that they have not sufficient information or belief to enable them to answer the allegations of paragraphs III and V of said complaint, and basing their denial upon that ground deny each and every allegation contained in said paragraphs.

1669

II.

Deny the allegations of paragraphs VI and VII of. said complaint.

Wherefore, Commissioner of the new company prays that they have judgment; that intervenor R. Rabinowitz take nothing by reason of his complaint; and that they have their costs and disbursements herein expended.

1670

U. S. WEBB,

Attorney General,

By JOHN L. FLYNN,

Deputy Attorney General,

Attorney for Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California.

ASA V. CALL and

O'MELVENY, TULLER & MYERS,

By ASA V. CALL

1671

Attorneys for Pacific Mutual Life Insurance Company, Intervener.

Verified.

Endorsed: Received copy of the within this 18 day of Aug. 1936. Lawler & Felix, attorneys for certain Defts.

Filed Aug. 18, 1936. L. E. Lampton, county clerk; by E. T. Crozier, deputy.

1672 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Pacific Mutual Life Insurance Company, intervener, Andrew J. Copp, Jr., intervener. No. 404673.

1673 Answer of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company to Complaint in Intervention of Andrew J. Copp, Jr.

Come now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company, a California corporation, hereinafter called "the new company", and for their answer to the com-

1674 plaint in intervention hereinabove referred to, admit, deny and allege as follows:

I.

Answering the allegations of paragraph II of said complaint, deny that subsequent to July 22, 1936, The Pacific Mutual Life Insurance Company of California has engaged in the business of life, health or accident insurance, or that since said date it has any assets in the state of California, or elsewhere.

1675

II.

Allege that they have not sufficient information or belief to enable them to answer the allegations of paragraph III of said complaint, and basing their denial upon that ground deny that all of the acts, representations and conduct of Maude Ross Ferguson, as agent for or on behalf of The Pacific Mutual Life Insurance Company of California, as set forth in said complaint, were within the scope of said agency, or were fully
1676 or otherwise authorized by said company, or were binding upon it.

III.

Allege that they have not sufficient information or belief to enable them to answer the allegations of paragraphs IV and V of said complaint, and basing their denial upon that ground deny each and every allegation thereof.

IV.

1677 Allege that they have not sufficient information or belief to enable them to answer the allegations of paragraph VI of said complaint, and basing their denial upon that ground deny that intervener on or about the 15th day of July, 1922, gave his consent to or accepted the alleged proposition of respondent corporation described in paragraph IV of said complaint; upon the same ground deny that respondent corporation duly or otherwise issued insurance substantially in accordance with the representation alleged to

1678 have theretofore been made by respondent corporation by or through its duly authorized agent Maude Ross Ferguson, as set forth in said complaint, or that the insurance so issued was in compliance with intervener's application therefor, or in conformity with respondent corporation's offer; upon the same ground deny that the policies attached to said complaint as Exhibits A and B related to the same matter or were made as parts of substantially one transaction, or were
1679 delivered to intervener together or at the same time or as a part of the same transaction, or that the said contracts comprising the insurance sold and issued to intervener by respondent were or are to be taken together as but one entire or indivisible contract.

V.

1680 Allege that they have not sufficient information or belief to enable them to answer the allegations of paragraph VII of said complaint, and basing their denial upon that ground deny each and every allegation thereof.

VI.

Answering the allegations in paragraph IX of said complaint, deny that intervener tendered to respondent corporation a premium of \$87.00 or any other sum on the 26th day of July, 1936, or that respondent corporation refused said premium.

1681

VII.

Deny the allegations of paragraph XI of said complaint except admit that the terms of said contract are as set forth in the Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement on file in the above entitled proceeding.

VIII.

1682

Deny the allegations of paragraph XII of said complaint except admit that it is proposed that the new company will carry on its business at the same location and with the same furniture used by the old company, and except admit that the terms and conditions under which said business is to be carried on are set forth in the Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement on file in the above entitled proceeding, and except admit that the identity of the old corporation is not destroyed.

1683

IX.

Deny the allegations of paragraph XIII of said complaint.

X.

Deny the allegations of paragraph XIV of said complaint, except admit that intervenor will have the rights provided for in said Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement on file in the above

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

212

3

8

9

9



1684 entitled proceeding, and the rights provided by law.

XI.

Deny the allegations of paragraphs XV and XVI of said complaint.

Wherefore, Commissioner of the new company prays that they have judgment; that intervenor Andrew J. Copp, Jr., take nothing by reason of his complaint; and that they have 1685 their costs and disbursements herein expended.

U. S. WEBB,

Attorney General,

By JOHN L. FLYNN,

Deputy Attorney General,

Attorney for Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California.

ASA V. CALL and

1686 O'MELVENY, TULLER & MYERS,

By ASA V. CALL,

Attorneys for Pacific Mutual Life Insurance Company, Intervener.

Verified.

Endorsed: Received copy of the within answer this 18th day of Aug., 1936. Andrew J. Copp, Jr., W., attorney for Andrew J. Copp, Jr.

Filed Aug. 18, 1936. L. E. Lampton, county clerk; by E. T. Crozier, deputy.

1687 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Pacific Mutual Life Insurance Company, intervener, Neil S. McCarthy, intervener. No. 404673.

1688 Answer of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company to Complaint in Intervention of Neil S. McCarthy.

Come now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company, a California corporation, hereinafter called "the new company", and for their answer to the complaint in intervention hereinabove referred to, admit, deny and allege as follows:

I.

Answering the allegations of paragraph VI of said complaint, deny that there was no impartial or independent appraisal or investigation into the affairs made by the court previous to the making of said order.

II.

Deny the allegations of paragraphs VII, VIII and X of said complaint.

1690

III.

Deny the allegations of paragraph IX of said complaint, except admit that said orders were all signed without notice to policyholders.

Wherefore, Commissioner of the new company prays that they have judgment; that intervenor Neil S. McCarthy take nothing by reason of his complaint; and that they have their costs and disbursements herein expended.

1691

U. S. WEBB,

Attorney General,

By JOHN L. FLYNN,

Deputy Attorney General,

Attorney for Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California.

ASA V. CALL, and

O'MELVENY, TULLER & MYERS,

By ASA V. CALL,

1692

Attorneys for Pacific Mutual Life Insurance Company, Intervener.

Verified:

Endorsed: Received copy of the within answer this 10 day of Aug., 1936. LeRoy Anderson, attorney for Neil S. McCarthy.

Filed Aug. 18, 1936. L. E. Lampton, county clerk; by E. T. Crozier, deputy.

1693 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Pacific Mutual Life Insurance Company, intervener, Wilber G. Katz, Norman Crawford and Robert A. Crawford, interveners. No. 404673.

1694

Answer of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company to Petition in Intervention of Wilber G. Katz, Norman Crawford and Robert A. Crawford.

Come now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company, a California corporation, hereinafter called "the new company", and, for their answer to the petition in intervention hereinabove referred to, admit, deny, and allege as follows:

I.

Deny the allegations of paragraph 2 of said petition, except admit that said policies were issued by The Pacific Mutual Life Insurance Company of California and contain the provisions set forth in the respective policies referred to in said petition.

1696

II.

Answering the allegations of paragraph 4 of said petition, deny that the only public notice of proceedings was given by newspaper advertisement in newspapers published in the cities of Los Angeles and San Francisco in the state of California. Admit that no publication or notice by mail of the rule requiring objections to be filed by August 12, 1936, was made in the state of Illinois. 1697° Allege that they have not sufficient information or belief to enable them to answer the allegations of said paragraph 4 except those herein specifically denied or admitted and, basing their denial upon that ground, deny all of the allegations of said paragraph, with the exception of those herein specifically denied or admitted.

III.

1698

Answering the allegations of paragraph 5 of said petition, admit that petitions or other papers have been filed in the above entitled proceedings showing that respondent is insolvent. Admit that the provisions of the Plan and Agreement of Rehabilitation and Reinsurance are as set forth in Exhibit A attached to the petition of Samuel L. Carpenter, Jr. herein. Deny the allegations of said paragraph 5 other than those herein specifically admitted.

IV.

Deny the allegations of paragraph 6 of said petition; except admit that the provisions of the plan and agreement therein referred to are set forth in Exhibit A attached to the petition of Samuel L. Carpenter, Jr. herein.

Wherefore, Commissioner and the new company pray that they have judgment; that interveners, Wilber G. Katz, Norman Crawford and Robert A. Crawford, take nothing by reason of their petition; and that they have their costs and disbursements herein expended.

U. S. WEBB,
Attorney General,

By JOHN L. FLYNN,
Deputy Attorney General,

Attorney for Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California.

ASA V. CALL and
O'MELVENY, TULLER & MYERS,
By HOMER I. MITCHELL,

Attorneys for Pacific Mutual Life Insurance Company, Intervener.

Endorsed: Filed Aug. 18, 1936. L. E. Lampton, county clerk; by E. T. Crozier, deputy.

1702 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Pacific Mutual Life Insurance Company, intervener, C. N. Wesley, L. S. Larson, E. H. Miller and George W. Struckman, interveners.

1703 No. 404673.

Answer of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company to Complaint in Intervention of C. N. Wesley, L. S. Larson, E. H. Miller and George W. Struckman.

1704 Come now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company, a California corporation, hereinafter called "the new company", and, for their answer to the complaint in intervention hereinabove referred to, admit, deny, and allege as follows:

I.

Answering the allegations of paragraph IV of said complaint, allege that they have not sufficient information or belief to enable them

1705 to answer and, basing their denial upon that ground, deny that intervening plaintiffs have otherwise duly kept or performed all of the provisions or obligations of said policies on their part to be kept or performed.

II.

1706 Answering the allegations of paragraph VI of said complaint, deny that petitioner, Samuel L. Carpenter, Jr., transferred all or any insurance policies in the Life Department or Accident Department of respondent. Deny that the court has confirmed the sale of any of said policies. Deny that the new company is seeking to have the sale of any of said policies confirmed or its title thereto quieted.

III.

1707 Deny the allegations of paragraph VIII of said complaint, except admit that assets of the old company have been transferred to the new company in accordance with the Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement, a copy of which is attached to the petition of Samuel L. Carpenter, Jr. herein and marked Exhibit A.

IV.

Allege that they have not sufficient information or belief to enable them to answer the alle-

1708 gations of paragraph IX of said complaint and,
basing their denial upon that ground, deny each
and every allegation thereof.

V.

Deny the allegations of paragraphs X, XI,
XII, XIII and XIV of said complaint.

1709 Wherefore, Commissioner and the new com-
pany pray that they have judgment; that inter-
veners, C. N. Wesley, L. S. Larson, E. H. Miller
and George W. Struckman, take nothing by rea-
son of their complaint; and that they have their
costs and disbursements herein expended.

U. S. WEBB,

Attorney General,

By JOHN L. FLYNN,

Deputy Attorney General,

*Attorney for Samuel L. Carpenter, Jr., Insurance
Commissioner of the State of California.*

1710

ASA V. CALL, and

O'MELVENY, TULLER & MYERS,

By HOMER I. MITCHELL,

*Attorneys for Pacific Mutual Life Insurance
Company, Intervener.*

Verified.

Endorsed: Filed Aug. 18, 1936. L. E.
Lainpton, county clerk; by E. T. Crozier, deputy.

1711 In the Superior Court of the State of California in, and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Pacific Mutual Life Insurance Company, intervener, Robert J. Webb, Philip M. Klutznick, and Hyman H. Alterman, for themselves and all other persons similarly situated, interveners. No. 1712 404-673.

Answer of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California and Pacific Mutual Life Insurance Company to Complaint in Intervention of Robert J. Webb, Philip M. Klutznick, and Hyman H. Alterman, for Themselves and All Other Persons Similarly Situated.

1713 Come now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company, a California corporation, hereinafter called "the new company," and for their answer to the complaint in intervention hereinabove referred to, admit, deny and allege as follows:

Answering the first cause of action:

I.

Admit all of the allegations of paragraph II of said complaint, except deny that Samuel L.

1714 Carpenter, Jr. was or now is purporting or pretending to act as Insurance Commissioner of the State of California, but allege that at all times mentioned in said complaint said Samuel L. Carpenter, Jr. was and now is the duly qualified and acting Insurance Commissioner of the State of California and acted as such.

II.

Admit the allegations of paragraphs III, IV and V of said complaint, excepting that they have
1715 no information or belief sufficient to enable them to answer the allegation in paragraph IV thereof that intervening plaintiffs therein named have duly kept and performed all of the provisions and obligations of said policies on their part to be kept and performed, and on that ground deny the same; and excepting that they deny the allegation contained in paragraph V thereof that said Samuel L. Carpenter, Jr., pur-
ported and pretended to act as Insurance Com-
1716 missioner, and allege that said person did act as said Insurance Commissioner of the State of California.

III.

Admit the allegations of paragraph VI of said complaint, except that they allege that Commissioner not only purported to act but did act pursuant to and under the authority of the orders, judgments and decrees therein referred to, and the terms and provisions of said insurance code; and except that they deny that said Commissioner

1717 or any person proceeded to or did transfer to said new company, or to any other person, all of the assets of said respondent or any assets other than those ordered to be so transferred by the provisions of the orders of said court, and deny that any assets transferred include all or any insurance policies in the life department or accident department or any department of the respondent corporation, or that all or any of such policies were transferred.

1718 IV.

Admit the allegations of paragraph VII of said complaint.

V.

1719 Answering the allegations of paragraph VIII of said complaint, admit that the old company therein described is without assets and means of paying any of its policies as the same mature according to the terms and provisions thereof and from continuing the same in full force and effect, or at all, and in that respect allege that all of the assets of said old company were divested from it and vested in Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, by the entry of an order appointing said Commissioner conservator of said respondent corporation made and entered on July 22, 1936, pursuant to the provisions of section 1011 of the Insurance Code of California. Admit that the new company has offered to reinsure the policies in said paragraph referred to

1720 only upon condition that holders thereof submit to a reduction in the benefits payable thereunder, such reductions ranging in amount from 80% to 10% thereof; but deny that such reduction is drastic or unwarranted, and in that connection allege that under the terms of the order of said court, including the plan and agreement of rehabilitation, sale and transfer of assets and re-insurance dated July 22, 1936, as amended July 1721 23, 1936, said policies may be restored to all or part of the original benefits payable thereunder, under the conditions set forth in said plan. Except as hereinabove stated, Commissioner and the new company deny each and all of the allegations of said paragraph.

VI.

In answer to paragraph IX of said complaint allege that they have no information or belief 1722 upon the subject sufficient to enable them to answer the allegations thereof, and upon that ground deny each and every allegation therein contained.

VII.

Deny each and all of the allegations of paragraph X of said complaint.

VIII.

Answering paragraph XI of said complaint, deny that the acts, orders, judgments and de-

1723 crees of the court or any of them, or the acts of said Commissioner, or any of them, or of said Old Company, or any of them, or of the New Company, or any of them, as set forth in said complaint or otherwise are unlawful or void or of no force or effect for the reasons stated therein, or for any reasons. Deny that at no time mentioned therein or in said complaint has said Old Company been insolvent under the

1724 terms and provisions of said Insurance Code of California. Deny that a few days prior to the 22nd day of July, 1936, or at any time, Occidental Life Insurance Company, a California corporation, or any other corporation, offered to purchase from said Old Company all of said Old Company's assets including said policies, or to keep said policies in full force or effect according to the terms or provisions thereof. Deny

1725 that Occidental Life Insurance Company, or any other corporation, offered for said assets, including said policies, the sum of \$10,000,000.00 or any other sum; deny that Commissioner or any other persons valued the assets of said Old Company at \$3,000,000.00 or any substantially similar sum in the said sale and transfer thereof to said New Company or otherwise and effected said sale and transfer at said valuation; admit that the actual value or market value of the as-

1726 sets of said Old Company transferred to said new Company is \$10,000,000.00 or more; deny that if the sale and transfer of said assets from said Old Company to the New Company is set aside or if the sale of said assets to Occidental Life Insurance Company is authorized and effected, all or any of said policies can or will be continued in full force and effect according to the terms and provisions thereof by said Occidental Life Insurance Company, or by any other person.

IX.

Deny that the facts set forth in paragraph XI of said complaint were known to said Commissioner or to said Old Company at any time, or to the New Company at any time, and in that respect allege that the purported facts alleged in Paragraph XI of said complaint are not true, 1728 as hereinabove set forth; deny that any facts were kept from the knowledge of the court by Commissioner or said Old Company, or the New Company, or any other person; deny that the acts of Commissioner or said Old Company, or the New Company, or any acts were done for the sole or any purpose of effecting a means or method by which said policies or any policies could or would be cancelled and intervening

1729 plaintiffs and others similarly situated, or any person, would be deprived of the benefits thereof.

X.

Admit the allegations of paragraph XIII.

Answering the second cause of action:

I.

1730 As an answer to intervening plaintiffs' further and second cause for intervention and cause of action, deny each and every allegation contained in paragraph I thereof.

Answering the third cause of action:

I.

As an answer to intervening plaintiffs' further and third cause for intervention and cause of action, deny each and every allegation contained in paragraph I thereof.

1731 Answering the fourth cause of action:

I.

As an answer to intervening plaintiffs' further and fourth cause for intervention and cause of action; deny each and every allegation contained in paragraph I thereof.

Answering the fifth cause of action:

I.

As an answer to intervening plaintiffs' further and fifth cause for intervention and cause of

1732 action, deny each and every allegation contained in paragraph I thereof.

Wherefore, Commissioner and the New Company pray that they have judgment; that intervening plaintiffs herein take nothing by reason of their said complaint; and for their costs and disbursements herein expended.

U. S. WEBB,
Attorney General,

1733

By JOHN L. FLYNN,
Deputy Attorney General,
Attorney for Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California.

ASA V. CALL and
O'MELVENY, TULLER & MYERS,
By HOMER I. MITCHELL,

1734 *Attorneys for Pacific Mutual Life Insurance Company, Intervener.*

Verified.

Endorsed: Filed Aug. 18, 1936. L. E. Lamp-ton, county clerk; by E. T. Crozier, deputy.

1735 In the Superior Court of the State of California, in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Pacific Mutual Life Insurance Company, intervenor. No. 404-673.

1736 Answer of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California and Pacific Mutual Life Insurance Company to Complaint in Intervention of George I. Cochran, W. H. Davis, Douglas E. C. Moore, and Stanley M. McClung.

1737 Come now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, hereinafter called "Commissioner," and Pacific Mutual Life Insurance Company, a California corporation, hereinafter called "the New Company," and for their answer to the complaint in intervention hereinabove referred to, admit, deny and allege as follows:

I.

Admit the allegations of paragraph I of said complaint.

II.

Answering the allegations of paragraph II of said complaint, admit that on or about the 22nd day of July, 1936, at a directors meeting of The

- 1738 Pacific Mutual Life Insurance Company of California Commissioner appeared accompanied by a deputy attorney general of the state of California and stated to the board of directors that said corporation was insolvent, that he intended to so declare it, and that he proposed to take over the possession and custody of the property thereof; that he stated that the results of the last examination required him to proceed in the above entitled court, in accordance with article 14, division 1, part 2, chapter 1, and that he further stated that he had conceived a plan for the rehabilitation of said corporation, all of which matters were contained in a printed document, a copy of which was handed to each member of the board of directors.
- 1739

Commissioner and the New Company have no information or belief sufficient to enable them to answer and on that ground deny the allegation that none of the persons named as interveners in said complaint in intervention referred to who were directors of said corporation and who were present at said meeting had any prior knowledge of the fact that said Commissioner was about to declare the corporation insolvent or take over its property, or assume charge of it, or that said persons or any of them had no knowledge of the fact that all or any of the aforesaid documents had been in the course of preparation for weeks, or for any time. Commissioner and the New Company admit that said documents had been

1740

1741 prepared under the supervision of said Commissioner, with the assistance of certain of the directors and officers of said corporation, but have insufficient information and belief to enable them to answer and on that ground deny that said directors had not before disclosed to the majority of the directors of said corporation, or to any of the persons named as interveners in said complaint, that it was the intention that the corporation be declared insolvent, nor that they or any
1742 persons were assisting the Commissioner in the accomplishment of such or any purpose; and on the same ground deny that said documents or any of them were prepared entirely without the knowledge of said persons named as interveners in said complaint.

III.

Answering the allegation of paragraph III of said complaint, Commissioner and the New Company have no information or belief upon the
1743 subject sufficient to enable them to answer, and therefore deny that George I. Cochrane, then chairman of the board of directors of said corporation, had been negotiating for some time, or any time, with one of the largest or any insurance company on the Pacific Coast, to the end that a condition in the Pacific Mutual Company created by contingent liability on non-cancellable policies might be corrected, and upon the same ground deny that at the time of said directors meeting, or at any time, said Cochrane

1744 had in his possession a detailed and formal proposal, or any proposal, by said corporation or any corporation or any person which would have the effect, or which said interveners believed would have the effect, of correcting or remedying the situation. Deny that said Cochrane stated to said Commissioner and the board of directors, or either of them, that he was in possession of the proposal above referred to and asked for its consideration, but admit that said

1745 Cochrane stated he had received a proposal for purchase of certain assets of said corporation made by a certain insurance company. Admit that said board of directors were told by said Commissioner that said proposal was unsatisfactory and would not be considered by him. Admit that at said meeting W. H. Davis, a director, moved that the board of directors meeting be adjourned for twenty-four hours to permit time for the consideration of such matters, but

1746 deny that in answering the said request, or at any time, said Commissioner or said Deputy Attorney General told the said W. H. Davis or the other directors, or any other person, that any attempt by them to take any action with respect to the affairs of the company might subject any such person to a felony charge. Deny that thereupon or at any time said George I. Cochrane stated to said Commissioner or to the board of directors that he could not see that under such conditions the directors had any re-

1747 course other than to acquiesce in the plan of the
Commissioner, but allege that said Cochrane did
so acquiesce. Allege that prior to adjournment
of said meeting said board of directors, after
duly considering all said documents presented
to it by said Commissioners, including said plan,
by the unanimous vote of all directors present
at said meeting, passed a resolution approving
said plan and agreeing to the action of said
Commissioner, and authorizing the attorney for
1748 said corporation to consent in court thereto.

IV.

Admit the allegations of paragraph IV of
said complaint, except that they deny that the
persons therein named or any of them assisted
at all in the preparation of any scheme described
in said complaint or any plan or scheme at all
other than the rehabilitation, sale and transfer
of assets and reinsurance plan and agreement
presented to the court.

1749

V.

Answering the allegations of paragraph V of
said complaint, deny that it was stated to the
directors or any of them at the conclusion of
the directors meeting aforesaid or at any time
that they were no longer directors or that no
one other than the Insurance Commissioner had
any power to perform any act on the part of
the corporation. Admit that Asa V. Call, being
the then duly authorized attorney for respond-

- 1750 ent corporation, appeared in court and filed with said court a written consent of said corporation. Deny that all the papers filed with and orders made by said court were filed and made at the same time. Deny that there was no hearing upon the application made by the Commissioner for an order to liquidate and wind up the affairs of respondent corporation, and in that respect allege that a full hearing was had upon said petition, including the taking of evidence. Deny
- 1751 that that portion of the order of liquidation that recites that notice has been duly given of the application is wholly or at all untrue, or is contrary to the facts. Deny that the corporation was not represented in court by its duly authorized attorneys or at all, and allege that the corporation was so represented. Deny that the corporation did not consent to the relief prayed for in said application and allege that the corporation did so consent. Admit that after said
- 1752 court made its order of liquidation, another document which had previously been prepared, being petition for order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of The Pacific Mutual Life Insurance Company of California, was offered to the court and an order permitting same was issued. Deny that the court was without any power or authority whatever to make said order, or any order, or to permit the transfer of the assets of said corporation, for

1753 the reasons given in said complaint or for any reason.

VI.

Admit the allegations of paragraph VI of said complaint.

VII.

Deny, generally and specifically, each and every allegation contained in paragraphs VII, VIII and IX of said complaint.

1754 Wherefore, the Commissioner and the New Company pray that intervening plaintiffs take nothing by their said complaint, and that they have their costs and disbursements herein expended.

U. S. WEBB,

Attorney General,

By JOHN L. FLYNN,

Deputy Attorney General,

Attorney for Samuel L. Carpenter, Jr., Insurance

1755 *Commissioner of the State of California.*

ASA V. CALL and

O'MELVENY, TULLER & MYERS,

By HOMER I. MITCHELL,

Attorneys for Pacific Mutual Life Insurance

Company, Internener.

Verified.

Endorsed: Filed Aug. 18, 1936. L. E. Lamp-ton, county clerk; by E. T. Crozier, deputy.

1756 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

° Pacific Mutual Life Insurance Company, intervener, Harold S. Cook, intervener. No. 404-673.

1757

Answer of Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company to Complaint in Intervention of Harold S. Cook.

Come now Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, and Pacific Mutual Life Insurance Company, a California corporation, hereinafter called "the new company," and for their answer to the complaint in intervention hereinabove referred to, admit, deny and allege as follows:

I.

Answering the allegations of paragraph VIII of said complaint, deny that concurrently with the filing of the application for appointment of

1759 Conservator petitioner filed an application for an order to liquidate, and allege that the application for an order to liquidate was filed by petitioner subsequent to the filing of the application for appointment of Conservator.

II.

1760 Answering the allegations of paragraph IX of said complaint, deny that concurrently with the filing of the applications referred to in paragraphs VII and VIII of said complaint petitioner filed a petition for an order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of the old company, and allege that said application last referred to was filed subsequent to the filing of the applications referred to in paragraphs VII and VIII of said complaint.

III.

Deny the allegations of paragraphs XII, XIV, XV, XVI, XVII and XVIII of said complaint.

Wherefore, Commissioner of the new company prays that they have judgment; that intervenor Harold S. Cook take nothing by reason of

1762 his complaint; and that they have their costs and disbursements herein expended.

U. S. WEBB,

Attorney General,

By JOHN L. FLYNN,

Deputy Attorney General,

Attorney for Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California.

1763

ASA V. CALL and

O'MELVENY, TULLER & MYERS,

By ASA V. CALL,

Attorneys for Pacific Mutual Life Insurance Company, Intervener.

Verified.

1764 Endorsed: Received copy of the within answer this 18 day of August, 1936. Loeb, Walker & Loeb; by Irving M. Walker, attorneys for ~~Harold~~ S. Cook, intervener.

Filed Aug. 18, 1936. L. E. Lampton, county clerk; by E. T. Crozier, deputy.

1765 In the Superior Court of the State of California, in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, v. The Pacific Mutual Life Insurance Company of California, respondent, Pacific Mutual Life Insurance Company, intervenor. No. 404673.

1766 **Response of R. Rabinowitz to Order to Show Cause Why "Rehabilitation Agreement" Should Not Be Confirmed, and Objections to Confirmation Thereof.**

Comes now R. Rabinowitz, and by way of response to that order to show cause dated August 14th, 1936, does object to the confirmation of the "Rehabilitation Agreement", therein described. As grounds therefor, your objector avers:

I.

1767 That this objector is and at all times herein mentioned has been the holder and owner of the following policies of health, accident and disability insurance heretofore issued by respondent herein, to-wit:

1. Policy No. 4641785 (Noncancellable Disability Policy) issued September 14, 1923.
2. Policy No. 4643430 (Noncancellable Disability Policy) issued November 19, 1923.
3. Policy No. 4670940 (Noncancellable Disability Policy) issued July 8, 1926.
4. Policy No. 384061 (Life Insurance with disability provisions) issued March 26, 1928.

II.

1768

That on July 22, 1936, each of the said policies of insurance hereinabove described was in good standing.

III.

That prior to July 22, 1936, this objector did become ill and disabled, at all times since has been and is now ill and disabled.

IV.

1769

That paragraph 10 of the "Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement Concerning The Pacific Mutual Life Insurance Company of California" (hereinafter referred to as the "Rehabilitation Agreement") provides:

1770

"The New Company shall be obligated to continue the payment of all disability benefits under Non-Can Policies, claims or notices of claims for which had been filed with the Old Company prior to the date of liquidation, and all payments under settlement agreements made by the Old Company with claimants under such policies, without any deduction or limitation whatsoever, but subject to all of the terms and provisions of such Non-Can Policies, and subject to any such settlement agreements; and subject, further, to any and all defenses, offsets, counter-claims, cross-complaints, and rescission rights against any such claim or claims, which would have been available to the Old Company had this agreement not been made."

V.

771 That while no formal written claim or formal written notice of claim was filed with respondent by this objector himself before July 22, 1936, the illness and disability of objector, as above described, did occur prior to said date and does presently continue.

VI.

772 Your objector avers that said "Rehabilitation Agreement" is unjust, unfair, inequitable and discriminatory in providing that the New Company shall be obligated to continue the payment of disability benefits, under non-cancellable policies, only when claim or notice of claim was filed thereon prior to July 22, 1936, and in failing to provide that the New Company shall likewise be obligated to make payment in full of all disability benefits under non-cancellable policies where the illness and disability of the assured did commence prior to said date.

773 VII.

That in so discriminating against the holders of policies of insurance who did become ill and disabled before July 22, 1936, the order of the above entitled court confirming said "Rehabilitation Agreement" and said agreement are and each is in violation of the Fourteenth Amendment of the Constitution of the United States and of section 13 of the Constitution of the State of California.

1774

VIII.

This objector does file this petition for and on behalf of himself and all other holders of health, accident and disability policies of insurance issued by respondent who did become ill or disabled prior to July 22, 1936, and who did not, prior to said date, file claim or notice of claim with respondent.

Wherefore, your objector prays:

1. That this court make its order disappearing paragraph 10 of the "Rehabilitation Agreement" and requiring that said paragraph 10 be revised so as to require and obligate the New Company to pay and continue to pay all disability benefits under all non-cancellable policies where the assured therein did become ill and disabled prior to July 22, 1936, and regardless of whether claim or notice of claim for such compensation was filed with respondent prior to July 22, 1936.

1776

R. RABINOWITZ,

By LAWLER & FELIX,

His Attorneys.

Verified.

Endorsed: Received copy of the within this 18 day of Aug., 19.... U. S. Webb, Attorney General, John L. Flynn, deputy, attorneys for petitioner.

Received copy of the within document Aug. 18, 1936, 3:30 p. m. O'Melveny, Tuller & Myers (invalid unless counsigned), by M. A. T.

Filed Aug. 18, 1936, 4:30 p. m. L. E. Lamp-ton, county clerk; by R. J. Curtis, deputy.

1777 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. Pacific Mutual Life Insurance Company of California, a corporation, respondent, Ralph C. Hamlin, intervener. No. 404673.

1778 **Complaint in Intervention to Set Aside Order Appointing Conservator and to Disapprove Any Plan Denying Equal Rights to All Policyholders.**

Comes now, Ralph C. Hamlin and by leave of court files this, his complaint in intervention herein, and for cause of action in intervention, alleges:

I.

1779 That at all times mentioned herein, the Pacific Mutual Life Insurance Company of California was, and is, a corporation incorporated under the laws of the state of California and has had, and still has, its principal place of business in the city of Los Angeles, county of Los Angeles, state of California; that for the purpose of brevity, said corporation is hereinafter referred to as "Old Company."

II.

That at all times herein mentioned, the Pacific Mutual Life Insurance Company was, and is, a corporation incorporated under the laws of the

1780 state of California, having its principal offices and place of business in the city of Los Angeles, county of Los Angeles, state of California; and, for the purpose of brevity, said corporation is hereinafter referred to as "New Company."

III.

1781 That at all times herein mentioned, Samuel L. Carpenter, Jr., was, and is, the Insurance Commissioner of the state of California, and for the purpose of brevity, said Samuel L. Carpenter, Jr., is hereinafter referred to as "Petitioner."

That the orders, judgments and decrees previously entered by this Court have been now set aside and vacated, except that your "Petitioner" remains by order of this Court as Conservator of the assets of said "Old Company."

IV.

1782 That for several years last past "Old Company" made and executed certain contracts, as part of its insurance business, known and designated as "Non-Cancellable Income Policies," wherein and whereby the said "Old Company" unconditionally guaranteed to the policyholders the payment of certain benefits, for which said "Old Company" received from the policyholders, in consideration of the execution of said contracts, the payment of premiums by the said policyholders.

1783

V.

That at all times herein mentioned the intervenor was, and is, the owner and holder of a certain "Non-Cancellable Income Policy" No. 5505732 issued by the respondent, the Pacific Mutual Life Insurance Company of California, a corporation, that intervenor has performed all the terms and conditions of said policy on his part to be performed.

VI.

1784

Intervenor is informed and believes, and upon such information and belief, alleges that subsequent to the execution by the "Old Company" of the hereinabove referred to "Non-Cancellable Income Policies," it became apparent to the "Old Company" that the rate of premiums charged as a consideration for said contracts was insufficient to establish a reserve sufficiently large to pay the benefits required to be paid under said contracts, and that then and thereafter the said

1785

"Old Company" increased the rate of premium required for said contracts.

VII.

Intervenor is informed and believes and, upon such information and belief, alleges that said officers and directors of "Old Company" have been endeavoring to devise some plan, scheme or device wherein and whereby, under the asserted cloak of legality, the policyholders of said "Non-Cancellable Income Policy" contracts with the

- 1786 "Old Company" would be deprived of the benefits of their contracts, which would, in effect, alter the terms of said contracts and reduce or eliminate the benefits accruing to said contract-holders. Intervener further alleges upon information and belief that in furtherance of said plan, the aforesaid officers and directors of said "Old Company" have persuaded the "Petitioner" herein to make application to this Honorable Court for permission to effect a reorganization, 1787 which would be in its nature, plan, scheme and proposal, segregate the assets of "Old Company" in which all contract-holders have an equal interest, for the benefit of a certain class of policy contracts, to the serious detriment and injury of contract-holders of "Non-Cancellable Income Policies"; and that such proposed plan contemplating the transfer of certain assets of "Old Company" to "New Company," and the reinsurance of said "Non-Cancellable Income Policies" 1788 on a materially reduced benefit schedule, creating as it proposes, a difference between classes of contract, is wholly unjustified, inequitable and has no legal or equitable warrant or authority.

VIII.

That no notice, actual or constructive, was given to intervener as a policyholder of "Old Company" of the rehabilitation plan, sale and transfer of assets of the "Old Company" and the reinsurance plan and agreement of the "Old

1789 Company," to which he is entitled by law, prior to the granting of certain orders, judgments and decrees hereinbefore made and vacated in part by this Court; that intervener has never been given an opportunity to protest such sale and plan and has never consented thereto.

That there were no hearings of the motion for said previous orders and without notice to the policy holders of said "Old Company" as required by section 1016 of the Insurance Code of the state of California, providing that no such orders should be made until after a full hearing of motions therefor.

IX.

Intervener is informed and believes and, upon such information and belief, alleges that your "Petitioner," as a part of the aforesaid scheme, device and proposal, will again submit the same plan, as heretofore submitted to this Honorable Court, for rehabilitation, sale and transfer of assets, and reinsurance plan to this Court, for its approval, or some similar plan, which will seriously impair and injure the rights of intervener.

Intervener alleges upon information and belief, that prior to the filing of this action by "Petitioner" there was in process of negotiation a plan for rehabilitation whereby the Occidental Life Insurance Company, a California corporation, had offered to purchase from said "Old Company" all of said "Old Company's" assets and

1792 had offered to reinsure and continue in full force and effect all of the policies of insurance of "Old Company," including the "Non-cancellable Income Policy" of intervener and all other policyholders of said type of policy.

Intervener further alleges upon information and belief that the rehabilitation, sale and transfer of assets and reinsurance plan and agreement of the Pacific Mutual Life Insurance Company of California is not the best possible plan for the protection of policyholders of the "Old Company" as was represented by "Petitioner"; that on the contrary, under said plan the protection and value of said policies of insurance, including that of intervener, will be greatly lessened and impaired. Intervener further alleges upon information and belief that if the sale and transfer of said assets from said "Old Company" to said "New Company" is set aside and the sale of said assets to said Occidental Life Insurance Company is authorized and effected, the interest of all said policyholders, including that of this intervener, will be more fully and adequately protected.

X.

Intervener is informed and believes and, upon such information and belief, alleges the fact to be that said "Old Company" was not insolvent within the terms and provisions of the Insurance Code of the state of California at the time said

1795 order appointing your "Petitioner" as Conservator, was signed by this Court, and that said order is therefore unlawful, void and of no force and effect.

Wherefore, intervener prays judgment as follows: That the Court make its order vacating and setting aside the order of this Court heretofore made herein appointing the said Samuel L. Carpenter, Jr., Conservator of the Pacific Mutual Life Insurance Company of California, a
1796 corporation; that the Court disapprove any rehabilitation plan, sale and transfer of assets and reinsurance plan that will give a preference or superior right to any particular class of policyholders of the Pacific Mutual Life Insurance Company of California, or impair or reduce the contract benefits of any particular class of policyholders; and for such other and further orders and relief as to this Court may seem just and equitable in the premises.

1797

GARNET C. RAINEY,

EDWARD D. NEUHOFF,

By EDWARD D. NEUHOFF,

Attorneys for Intervener.

Verified.

Endorsed: Filed Aug. 19, 1936, 4:05 p. m.
L. E. Lampton, county clerk; by C. H. Holdredge, deputy.

1798 In the Superior Court of the State of California, in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a Corporation, respondent.

Pacific Mutual Life Insurance Company, a Corporation, intervener, Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans, interveners. No. 404673.

1799 Petition for Leave to File Complaint in Intervention.

Come Now Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans and allege:

I.

That Dr. Arthur B. Allen has an interest in the above entitled action by reason of his ownership of a Non-cancellable Income Policy No. 4620018, which was heretofore issued by The Pacific Mutual Life Insurance Company of California, a California corporation, and which continues to be in full force and effect.

1800 That Dr. Carl H. Parker has an interest in the above entitled action by reason of his ownership of Non-cancellable Income Policies No. 2659782, 4618163 and 4618164, each of which was heretofore issued by The Pacific Mutual Life Insurance Company of California, a California corporation, and each of which continues to be in full force and effect.

1801 That Lloyd W. Brooke has an interest in the above entitled action by reason of his ownership of Non-cancellable Income Policies Nos. 4610213 and 4624083, each of which was heretofore issued by The Pacific Mutual Life Insurance Company of California, a California corporation, and each of which continues to be in full force and effect.

1802 That I. Blair Evans has an interest in the above entitled action by reason of his ownership of Non-cancelable Income Policies Nos. 4654273 and 5507766, each of which was heretofore issued by The Pacific Mutual Life Insurance Company of California, a Corporation, and each of which continues to be in full force and effect.

II.

That each of them desires to intervene in this action.

1803 Wherefore, Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans pray that the Court grant leave to them to intervene in the above entitled action.

Dated: August 19, 1936.

DE. ARTHUR B. ALLEN,
DR. CARL H. PARKER,
LLOYD W. BROOKE,
I. BLAIR EVANS,

*Petitioners.**

W. B. ETHERIDGE,
Attorney for Petitioners.

1804 In the Superior Court of the State of California, in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a Corporation, respondent.

Pacific Mutual Life Insurance Company, a Corporation, intervener, Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans, interveners. No. 404673.

1805 AFFIDAVIT IN SUPPORT OF PETITION FOR
LEAVE TO FILE COMPLAINT IN INTERVEN-
TION.

State of California, County of Los Angeles—ss.

I. Blair Evans, being first duly sworn, on oath deposes and says:

That he is one of the persons designated in the accompanying complaint in intervention as plaintiffs therein.

1806 That as appears from the file in the above entitled action in which said plaintiffs propose to intervene, said action involves questions of great public interest, affecting a large number of persons; that each of said plaintiffs is a holder and owner of regularly issued policies of the respondent, The Pacific Mutual Life Insurance Company of California, a California corporation, of the type known as Non-cancellable Income Policies; that each of said plaintiffs has, by reason of the ownership of said policies, a special and

1807 particular interest in said action; that a hearing at which said plaintiffs are entitled to appear and present their said interests to the Court has been set for August 20, 1936, in Department 3 of the above entitled Court; that in order for said plaintiffs to be adequately represented and their interests protected, it is necessary for them to be permitted forthwith and without notice to serve and file as their complaint in intervention herein the document annexed hereto and made a part
1808 hereof, the same to be served upon the attorney for Samuel L. Carpenter, Jr., as Insurance Commissioner, upon the attorneys for The Pacific Mutual Life Insurance Company of California, a California corporation, respondent herein, and upon the attorneys for Pacific Mutual Life Insurance Company, a California corporation, an intervener in said action, and upon such other persons, firms and corporations as this Court shall now or later direct.

1809 Affiant makes this affidavit for the purpose of obtaining from this Court a summary order without notice, authorizing and directing the filing and service of such complaint in intervention, as aforesaid.

I. BLAIR EVANS.

Subscribed and sworn to before me this 19th day of August, 1936.

[Seal]

MYRTLE S. CRANE.

*Notary Public in and for the State of California,
County of Los Angeles.*

1810 Points and Authorities.

The Court has authority to make the order prayed for.

Section 382, Code of Civil Procedure.

Section 387, Code of Civil Procedure.

W. B. ETHERIDGE,

Attorney for Intervening Plaintiffs.

In the Superior Court of the State of California, in and for the County of Los Angeles.

1811 Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a Corporation, respondent.

Pacific Mutual Life Insurance Company, a Corporation, intervener. Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans, interveners. No. 404673.

1812 ORDER GRANTING LEAVE TO FILE AND SERVE COMPLAINT IN INTERVENTION.

Upon reading the accompanying Complaint in Intervention of Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans and the Affidavit of I. Blair Evans in support thereof, and upon motion of W. B. Etheridge, attorney for the plaintiffs named in said complaint in intervention, and good cause appearing therefor:

It Is Hereby Ordered that Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke

13 and I. Blair Evans be and they hereby are authorized to intervene as such plaintiffs in the above entitled action; and that they are hereby permitted and authorized to file as their complaint in intervention said document entitled "Complaint in Intervention of Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans."

14 It Is Hereby Further Ordered that a copy of said "Complaint in Intervention of Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans" be served upon the attorney for Samuel L. Carpenter, Jr. as Insurance Commissioner of the State of California, upon the attorneys for The Pacific Mutual Life Insurance Company of California, a California corporation, and upon the attorneys for Pacific Mutual Life Insurance Company, a California corporation, or in lieu thereof, upon each of said parties or the persons authorized by said parties
15 on their attorneys to accept service of complaints in intervention in this action; and that said service shall constitute due and proper service of their complaint in intervention.

It Is Hereby Further Ordered that the service of said complaint in intervention, as provided hereinabove in this order, may be completed on August 19, 1936.

August 19, 1936.

HENRY M. WILLIS,

Judge

1816 In the Superior Court of the State of California, in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a Corporation, respondent.

Pacific Mutual Life Insurance Company, a Corporation, intervener. Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans, interveners. No. 404673.

1817

COMPLAINT IN INTERVENTION OF DR. ARTHUR B. ALLEN, DR. CARL H. PARKER, LLOYD W. BROOKE, AND I. BLAIR EVANS.

Come Now Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans, and by leave of the Court first obtained, file this, their complaint in intervention, and For a First Cause of Intergention and for a First Cause of Action, allege as follows:

1818

I.

That the plaintiff, Arthur B. Allen is a resident of Los Angeles County, California, that at the present time he is the owner of a certain policy issued by the respondent herein under date of August 2, 1921; that said policy is known as a Non-cancellable Income Policy bearing No. 4620018; that all of the premiums due under the terms of said policy up to the present time have been paid at or prior to the time same be-

1819 came due, and said policy is at the present time in full force and effect; that said policy is at this time very valuable and plaintiffs have been informed and believe and therefore allege upon information and belief that it would be impossible for the plaintiff, Dr. Arthur B. Allen to replace said policy in any company writing insurance of the same type.

II.

1820 That the plaintiff, Dr. Carl H. Parker, is a resident of Los Angeles County, California; that at the present time he is the owner of three certain policies issued by the respondent herein under date of July 23, 1919, June 23, 1921, and June 23, 1921, respectively; that said policies are known as Non-cancellable Income Policies bearing Nos. 2659782, 4618163 and 4618164, respectively; that all of the premiums due under the terms of said policies up to the present time have been paid at or prior to the time same
1821 became due, and each of said policies is at the present time in full force and effect; that each of said policies is at the present time very valuable and plaintiffs have been informed and believe and therefore allege upon information and belief that it would be impossible for the plaintiff, Dr. Carl H. Parker, to replace either of said policies in any company writing insurance of the same type.

1822

III.

That the plaintiff, Lloyd W. Brooke, is a resident of Los Angeles County, California, that at the present time he is the owner of two certain policies issued by the respondent herein under date of May 31, 1921, and September 28, 1924, respectively; that said policies are known as Non-cancellable Income Policies bearing Nos. 4610213 and 4624083, respectively; that all of the premiums due under the terms of said policies up to the present time have been paid at or prior to the time same became due, and said policies and each of them are at the present time in full force and effect; that said policies are at this time very valuable and plaintiffs have been informed and believe and therefore allege upon information and belief that it would be impossible for the plaintiff, Lloyd W. Brooke, to replace either of said policies in any company writing insurance of the same type.

1824

IV.

That the plaintiff, I. Blair Evans is a resident of Los Angeles County, California; that at the present time he is the owner of two certain policies issued by the respondent herein under date of January 5, 1925, and May 24, 1927, respectively; that said policies are known as Non-cancellable Income Policies bearing Nos. 4654273 and 5507766, respectively; that all of the premiums due under the terms of said policies up to

1825 the present time have been paid at or prior to the time same became due, and each of said policies is at the present time in full force and effect; that each of said policies is at the present time very valuable and the plaintiffs have been informed and believe and therefore allege upon information and belief that it would be impossible for the plaintiff, I. Blair Evans, to replace either of said policies in any company writing insurance of the same type.

1826

V.

That, except as otherwise hereinafter alleged, at all times mentioned herein, The Pacific Mutual Life Insurance Company of California was and is a corporation incorporated under the laws of the State of California and has had and still has its principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California; and that, for brevity, said corporation hereinafter sometimes is referred to as Respondent and sometimes is referred to as Old Company.

1827

That from and after the time more specifically set forth hereinafter, Pacific Mutual Life Insurance Company has been and still is a corporation incorporated under the laws of the State of California, and having its principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California; and that, for brevity, said corporation hereinafter some-

1828 times is referred to as Intervener and sometimes is referred to as New Company.

That at all times mentioned herein, Samuel L. Carpenter, Jr., was and now is purporting and pretending to act as Insurance Commissioner of the State of California pursuant to the provisions of the Insurance Code of the State of California; and that, for brevity, said person hereinafter sometimes is referred to as Petitioner.

VI.

1829 That at all times mentioned herein, said Old Company was authorized to issue and did issue policies of insurance of the type known as Non-cancellable Income Policies; that said policies have been issued to thousands of persons and thousands of said policies are still outstanding in the hands of the lawful owners thereof who have paid all the premiums required thereunder and otherwise have duly kept and performed all of the provisions and obligations of said policies on their part to be kept and performed; and that hereinafter, for brevity, such policies or type of policies are referred to as Policies.

1830

VII.

That heretofore, to-wit, on or about the 22nd day of July, 1936, the above entitled action or proceeding was commenced in the above entitled Court by said Petitioner, purporting and pretending to act as Insurance Commissioner of the State of California, as petitioner, against The

- 1831 Pacific Mutual Life Insurance Company of California, a California corporation, as respondent, with the knowledge and consent of said Respondent, for the purpose of having Petitioner authorized, pursuant to certain provisions of the Insurance Code of the State of California, to be appointed conservator of the Respondent, to work out a rehabilitation and/or reinsurance plan or agreement concerning said Respondent, and, if that should prove to be impracticable, then to
- 1832 wind up and liquidate said Respondent.

VIII.

- That thereafter and prior to the filing of this complaint in intervention, this Court, with the knowledge and consent of said Respondent, made certain orders and entered certain judgments and decrees herein, all of which appear more fully in the pleadings, records, files, minutes, orders, judgments, decrees and proceedings herein (which said pleadings, records, files, minutes, orders, judgments, decrees and proceedings are hereby incorporated herein in their entirety by reference thereto the same as though set forth herein in haec verba); that, purporting to act pursuant to and under the authority of said orders, judgments and decrees, and the terms and provisions of said Insurance Code, and, in particular, the provisions of Division 3, and of Article 13 of Chapter 1, of Part 2, of Division 1 thereof, the said Petitioner, with the knowledge
- 1833

1834 and consent of said Respondent, proceeded to incorporate a new corporation under the laws of the State of California, to-wit, said New Company and to transfer to said New Company all of the assets of said Respondent, including all insurance policies in the Life Department and Accident Department of said Respondent except said Policies described in Paragraph VI hereof; that said Court has confirmed said sale, with the knowledge and consent of said Respondent, but 1835 that said New Company has intervened herein and is seeking to have said sale further confirmed and its title to said assets quieted, and to have any and all objectors to such sale given an opportunity to make and present their objections.

IX.

That each of the intervening plaintiffs herein is a holder of one or more such Policies as same are more particularly described in Paragraphs I, II, III, IV and VI herein.

1836

X.

That the sale of the assets of the Old Company to the New Company, as aforesaid, has left said Old Company without assets or means of paying any of said Policies as same mature, according to the terms and provisions thereof, and from continuing same in full force and effect, or at all; that said New Company has offered to reinsure said Policies only upon condition that the holders thereof, among whom are the inter-

1837 vening plaintiffs, submit to a drastic and unwarranted reduction in the benefits payable thereunder, such reductions ranging in amount to from eighty per cent to ten per cent thereof; that unless the acts of said Court and of said Petitioner, as set forth herein, particularly Paragraphs VII and VIII, and this paragraph, are set aside and nullified and the assets of said Old Company which were transferred to said New Company, as aforesaid, are restored to said Old Company, said Old Company will be unable to keep said Policies in full force and effect or at all, according to the terms and provisions thereof.

XI.

That, by reason of the premises above set forth, intervening plaintiffs have no speedy and adequate remedy at law, and that unless said Old Company is restored to a position where it can continue said Policies, as set forth in Paragraph X hereof, intervening plaintiffs will suffer great and irreparable damage, injury and harm.

XII.

That the acts, orders, judgments and decrees of said Court herein, the acts of said Petitioner, the acts of said Old Company, and the acts of said New Company, as set forth herein, and, in particular, in said Paragraphs VII, VIII and X hereof, are unlawful, void and of no force or effect for the reason that at no time mentioned

- 1840 herein has said Old Company been insolvent within the terms and provisions of said Insurance Code of California, and, in particular, of Articles 13 and 14 of Chapter 1 of Part 2 of Division 1 thereof; and, in this connection, intervening plaintiffs further allege, on information and belief, that a few days prior to the 22nd day of July, 1936, Occidental Life Insurance Company, a California corporation, offered to purchase from said Old Company all of said
- 1841 Old Company's assets, including said Policies, and to keep said Policies in full force and effect according to the terms and provisions thereof, offering for said assets the sum of Ten Million (\$10,000,000.00) Dollars, which sum it was then and there willing and able to pay; that said offer has not been withdrawn, but may still be accepted; that said Petitioner valued the assets of said Old Company at Three Mililon (\$3,000,000.00) Dollars in the said sale and transfer
- 1842 thereof to said New Company, and effected said sale and transfer at said valuation; that said figure of \$3,000,000.00 was far below the actual value or market value of said assets, and that the actual value or market value thereof is Ten Million Dollars or more; that if the sale and transfer of said assets from said Old Company to said New Company is set aside and the sale of said assets to said Occidental Life Insurance Company is authorized and effected, all of said

1843 Policies can and will be continued in full force and effect, according to the terms and provisions thereof, by said Occidental Life Insurance Company.

XIII.

That the facts set forth in Paragraph XII hereof were known to said Petitioner and to said Old Company at the times mentioned and described in Paragraphs VII, VIII and X hereof, and to said New Company at the time of and
1844 since its incorporation and its acquisition, as aforesaid, of the assets of said New Company; that said facts were not known to said Court, but, upon information and belief, that same were kept from the knowledge of said Court by said Petitioner, said Old Company and said New Company; and that the acts of Petitioner, said Old Company and said New Company, as heretofore set forth herein, were done for the sole purpose of effecting a means or method by which
1845 said Policies could and would be cancelled and intervening plaintiffs herein would be deprived of the benefits thereof.

For a Further and Second Cause for Intervention and Second Cause of Action, intervening plaintiffs reallege and incorporate herein by reference, with the same force and effect as though set forth in haec verba, the whole of the First Cause for Intervention and First Cause of Action, and further allege:

1846

I.

That all of the said acts, orders, judgments and decrees of said Court, all of the said acts of said Petitioner, all of the said acts of said Old Company and all of the said acts of said New Company, hereinbefore set forth and referred to, were and are, and each of them was and is, null, void, and of no force or effect, for the reason that each and every said order, judgment, decree and act was and is in conflict with, and illegal
1847 and void under, the following provisions of the Constitution of the State of California, to-wit:

(a) Sections 7, 11, 13, 16, 21 and 22 of Article I thereof;

(b) Section 1 of Article III thereof;

(c) Sections 24 and 25 of Article IV thereof;
and

(d) Section 1 of Article XII thereof.

1848

For a Further and Third Cause for Intervention and Third Cause of Action, intervening plaintiffs reallege and incorporate herein by reference, with the same force and effect as though set forth in haec verba, the whole of the First Cause for Intervention and First Cause of Action, and further allege:

I.

That all of the said acts, orders, judgments and decrees of said Court, all of the said acts of said Petitioner, all of the said acts of said Old

849 Company and all of the said acts of said New Company, hereinbefore set forth and referred to, were and are, and each of them was and is, null, void, and of no force or effect, for the reason that each and every said order, judgment, decree and act was and is in conflict with, and illegal and void under, Section 1 of the Fourteenth Amendment to the Constitution of the United States.

850 For a Further and Fourth Cause for Intervention and Fourth Cause of Action; intervening plaintiffs reallege and incorporate herein by reference, with the same force and effect as though set forth in haec verba, the whole of the First Cause for Intervention and First Cause of Action, and further allege:

I.

851 That if the Insurance Code of the State of California, and, in particular, Division 3 and Articles 13 and 14 of Chapter 1 of Part 2 of Division 1 thereof, authorize, or shall be construed or deemed to authorize, the acts, orders, judgments and decrees of said Court or the acts of said New Company, the said Insurance Code, and, in particular, the portions thereof specifically referred to, are illegal, null, void, and of no force or effect, in that each of them is in conflict with and is contrary to, and is forbidden by, the following provisions of the Constitution of the State of California, to-wit:

1852 (a) Sections 7, 11, 13, 16, 21 and 22 of Article I thereof;

(b) Section 1 of Article III thereof;

(c) Sections 24 and 25 of Article IV thereof; and

(d) Section 1 of Article XII thereof.

For a Further and Fifth Cause for Intervention and Fifth Cause of Action, intervening plaintiffs reallege and incorporate herein by
1853 reference, with the same force and effect as though set forth in haec verba, the whole of the First Cause for Intervention and First Cause of Action, and further allege:

I.

That if the Insurance Code of the State of California, and, in particular, Division 3 and Articles 13 and 14 of Chapter 1 of Part 2 of Division 1 thereof, authorize, or shall be construed or deemed to authorize, the orders, judgments and decrees of said Court, as aforesaid, or
1854 the acts of said Petitioner, or the acts of said Old Company, as aforesaid, or the acts of said New Company, as aforesaid, the said Insurance Code, and, in particular, the portions thereof specifically referred to, are illegal, null, void, and of no force or effect, in that said Insurance Code, and, in particular, the said portions thereof, are in conflict with and each of them is contrary to,

55 and is forbidden by, Section 1 of the Fourteenth Amendment to the Constitution of the United States.

Wherefore, intervening plaintiffs demand judgment as follows:

56 1. Vacating, setting aside and declaring null, void and of no force or effect, each of the acts, orders, judgments and decrees herein of this Court which authorized, directed or confirmed the several acts of said Petitioner, the several acts of said Old Company and the several acts of said New Company, as same are more particularly described, directly or by reference, in this complaint in intervention.

2. Vacating, setting aside and declaring null, void and of no force or effect, each of said acts of said Petitioner, each of said acts of said Old Company and each of said acts of said New Company.

57 3. That it be ordered, decreed and adjudged that the said Policies herein described of the plaintiffs in intervention herein should and shall be treated equally and on the same basis with all other policies issued by the Old Company, and that no single type or group of policies or holders of policies issued by the Old Company be preferred against any other type or group of policies or holders of policies issued by the Old Company.

1858 4. For such other and further order, judgment, decree and relief as shall be just or necessary in the premises.

W. B. ETHERIDGE,

Attorney for Intervening Plaintiffs.

State of California, County of Los Angeles—ss.

1859 I. Blair Evans, being by me first duly sworn, deposes and says: that he is the one of the plaintiffs named in the above and foregoing "Complaint in Intervention of Dr. Arthur B. Allen, Dr. Carl H. Parker, Lloyd W. Brooke and I. Blair Evans," in the above entitled action; that he has read the foregoing complaint and knows the contents thereof; and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

1860

I. BLAIR EVANS.

Subscribed and sworn to before me this 19 day of August, 1936.

[Seal]

MYRTLE S. CRANE.

Notary Public in and for the County of Los Angeles, State of California.

Endorsed. Filed 3:41 p. m. Aug. 19, 1936.

L. E. Lampton, county clerk; by R. J. Curtis, deputy.

1861 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, v. The Pacific Mutual Life Insurance Company of California, respondent, Pacific Mutual Life Insurance Company, intervener. No. 404673.

Return of John Pleasant Oliver to Order to Show Cause.

1862 Comes now John Pleasant Oliver, a policyholder and person interested in the above entitled proceedings and files this, his return to the order to show cause issued by the above entitled Court on the 23rd day of July, 1936, and his objections to the proceedings in said cause as follows:

I.

1863 That at all times herein mentioned, objector was and now is, the owner and holder of Non-cancellable Income Policy Number 5508440 (Form A 383) issued by The Pacific Mutual Life Insurance Company of California, the respondent above named; that all premiums due upon the policy aforesaid have been paid and said policy is now in full force and effect.

II.

Objector objects to the

a. Confirming and approving and ratifying the permission given with respect to that certain plan and agreement of rehabilitation, sale and

1864 transfer of assets and reinsurance of The Pacific Mutual Life Insurance of California, which said plan and agreement of rehabilitation is referred to in the order to show cause issued herein on the 23rd day of July, 1936 and the carrying out of the terms and provisions thereof;

b. The confirming and approving the action of Samuel L. Carpenter, Jr., as Insurance Commissioner of the state of California and as liquidator of The Pacific Mutual Life Insurance
1865 Company of California, and the action of Pacific Mutual Life Insurance Company, in making, executing and carrying out that certain agreement provided for in said plan and agreement, a copy of which agreement as executed is attached to the petition referred to in said order to show cause as Exhibit B and that certain amended agreement, a copy of which is attached to said petition as Exhibit D;

c. Confirming and approving the execution
1866 and delivery of the deed and bill of sale attached to the petition referred to in said order to show cause as Exhibit C; and the action of said Samuel L. Carpenter, Jr., as Insurance Commissioner of the state of California, and as liquidator of said The Pacific Mutual Life Insurance Company of California, in transferring and setting over to said Pacific Mutual Life Insurance Company, all of the assets of said The Pacific Mutual Life Insurance Company of California;

1867 d. Each, every and all of the proceedings taken and had up to and including the issuance of said order to show cause on the 23rd day of July, 1936, by the Honorable Douglas L. Edmonds, Judge of the above entitled Court;

e. Each, every and all of the proceedings proposed to be taken and had in connection with the above entitled proceedings;

III.

1868 The objections aforesaid are made upon the following grounds, to wit:

a. That said permission and order given with respect to said plan and agreement of rehabilitation is unlawful and void for the reason that no hearing of motion for said permission and order was had as required by section 1016 of the Insurance Code of the state of California;

1869 b. That the proposed plan of rehabilitation is not the best possible plan for the protection of this objector and other policyholders in The Pacific Mutual Life Insurance Company of California similarly situated;

c. That said plan, if adopted or approved by this Court, will render the policy owned and held by this objector, practically worthless;

d. That said plan undertakes to substitute some fractional liability by the Pacific Mutual Life Insurance Company for the obligations of The Pacific Mutual Life Insurance Company of California to this objector;

1870 e. That said plan, if carried out, would constitute a violation of this objector's rights under sections 7, 11, 13, 16, 21 and 22 of Article 1 and section 1 of Article 3, and section 1 of Article 12 of the Constitution of the state of California, and also section 1 of the 14th amendment to the Constitution of the United States of America.

IV.

1871 This objector objects to any plan or scheme which would impair in any manner or way, the obligation of this objector's contract with the Pacific Mutual Life Insurance Company of California.

V.

This objector objects to all proceedings and orders heretofore or hereafter made by the above entitled Court in the above proceeding on the
1872 ground that each, every and all of the laws and statutes upon which such proceedings or orders were based, are, and each of them is, unconstitutional and void.

VI.

Objector objects to each, every and all of the orders heretofore made in the above entitled proceeding on the grounds and for the reason that the true facts of the case could not and would not justify the making of said order.

1873

VII.

Objector hereby refers to the objection heretofore or hereafter filed by all other persons in a similar situation, and to complaints in intervention heretofore or hereafter filed by persons in a similar situation as this objector in respect to the above entitled proceedings, and by such reference, hereby adopts the said objections and said complaints in intervention of said persons and
 1874 incorporates the same herein as a part of this return.

Wherefore, this objector prays that the objections hereinbefore taken to the proceedings in the above entitled matter be allowed and sustained and that appropriate orders be made by the above entitled Court setting aside and vacating each, every and all of the orders heretofore made in
 1875 the above entitled proceeding and restoring this objector to the same status that he occupied before said proceedings were instituted.

JOHN PLEASANT OLIVER,

John Oliver,

In Propria Persona.

Verified.

Endorsed: Filed Aug. 19, 1936, 5:01 p. m.
 L. E. Lampton, county clerk; by E. T. Crozier,
 deputy.

1876 [TITLE OF COURT AND CAUSE.]

**Return of Alfred F. MacDonald to Order to
Show Cause.**

Comes now Alfred F. MacDonald, a policyholder and person interested in the above entitled proceedings and files this, his return to the order to show cause issued by the above entitled court on the 23rd day of July, 1936, and his objections to the proceedings in said cause as follows:

1877

I.

That at all times herein mentioned, objector was and now is, the owner and holder of Non-cancelable Income Policy Number 5514395 (Form A 383) issued by The Pacific Mutual Life Insurance Company of California, the respondent above named; that all premiums due upon the policy aforesaid have been paid and said policy is now in full force and effect.

II.

1878

Objector objects to the

a. Confirming and approving and ratifying the permission given with respect to that certain plan and agreement of rehabilitation, sale and transfer of assets and reinsurance of The Pacific Mutual Life Insurance of California, which said plan and agreement of rehabilitation is referred to in the Order to Show Cause issued herein on the 23rd day of July, 1936, and the carrying out of the terms and provisions thereof;

1879 b. The confirming and approving the action of Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and the action of Pacific Mutual Life Insurance Company, in making, executing and carrying out that certain agreement provided for in said plan and agreement, a copy of which agreement as executed, is attached to the petition referred to in said Order to Show Cause as Exhibit B and that certain amended agreement, a copy of which is attached to said petition as Exhibit D;

1881 c. Confirming and approving the execution and delivery of the Deed and Bill of Sale attached to the petition referred to in said Order to Show Cause as Exhibit C; and the action of said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, and as liquidator of said The Pacific Mutual Life Insurance Company of California, in transferring and setting over to said Pacific Mutual Life Insurance Company, all of the assets of said The Pacific Mutual Life Insurance Company of California;

d. Each, every and all of the proceedings taken and had up to and including the issuance of said Order to Show Cause on the 23rd day of July, 1936, by the Honorable Douglas L. Edmonds, Judge of the above entitled court;

- 1882 c. Each, every and all of the proceedings proposed to be taken and had in connection with the above entitled proceedings.

III.

The objections aforesaid are made upon the following grounds, to-wit:

- 1883 a. That said permission and order given with respect to said plan and agreement of rehabilitation is unlawful and void for the reason that no hearing of motion for said permission and order was had as required by Section 1016 of the Insurance Code of the State of California;

b. That the proposed plan of rehabilitation is not the best possible plan for the protection of this objector and other policy holders in The Pacific Mutual Life Insurance Company of California similarly situated;

- 1884 c. That said plan, if adopted or approved by this court, will render the policy owned and held by this objector, practically worthless;

d. That said plan undertakes to substitute some fractional liability by the Pacific Mutual Life Insurance Company for the obligations of The Pacific Mutual Life Insurance Company of California to this objector;

e. That said plan, if carried out, would constitute a violation of this objector's rights under sections 7, 11, 13, 16, 21 and 22 of article 1 and section 1 of article 3, and section 1 of article 12

1885 of the Constitution of the state of California, and also section 1 of the 14th amendment to the Constitution of the United States of America.

IV.

This objector objects to any plan or scheme which would impair in any manner or way, the obligation of this objector's contract with The Pacific Mutual Life Insurance Company of California. -

V.

1886 This objector objects to all proceedings and orders heretofore or hereafter made by the above entitled court in the above proceeding on the ground that each, every and all of the laws and statutes upon which such proceedings or orders were based, are, and each of them is, unconstitutional and void.

VI.

1887 Objector objects to each, every and all of the orders heretofore made in the above entitled proceeding on the grounds and for the reason that the true facts of the case could not and would not justify the making of said order.

VII.

Objector hereby refers to the objections heretofore or hereafter filed by all other persons in a similar situation, and to complaints in intervention heretofore or hereafter filed by persons in a similar situation as this objector in respect to the above entitled proceedings, and by such

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

W

8

-6

6



1888 reference, hereby adopts the said objections and said complaints in intervention of said persons and incorporates the same herein as a part of this return.

Wherefore, this objector prays that the objections hereinbefore taken to the proceedings in the above entitled matter be allowed and sustained and that appropriate orders be made by the above entitled court setting aside and vacating each, every and all of the orders heretofore made in the above entitled proceeding and restoring this objector to the same status that he occupied before said proceedings were instituted.

ALFRED F. MACDONALD,

In Propria Persona.

Endorsed: Received copy of the within return this 19th day of August, 1936. U. S. Webb, attorney general, John L. Flynn, deputy, attorney for petitioner.

Received copy of the within return this 19th day of August, 1936. Asa V. Call, attorney for respondent.

Received copy of the within return this 19th day of August, 1936. O'Melveny, Tuller & Myers, M. A. T., attorney for intervenor.

Filed Aug. 19, 1936, 4:41 p. m. L. E. Lampton, county clerk; by C. J. Bergquist, deputy.

1891 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner, etc., plaintiff, vs. The Pacific Mutual Life Insurance Company of California, defendant.
No. 404673.

Appearance of Robert Casamajor, Walter A. Barnes, Paul V. Barnes, and Clarence August Siegfroid, and Return to the Order to Show Cause.

1892

1.

Come now Robert Casamajor, Walter A. Barnes, Paul V. Barnes, and Clarence August Siegfroid and each of them makes his appearance herein as a respondent owning and holding a non-cancellable policy of insurance issued by The Pacific Mutual Life Insurance Company of California, and make their return to the order to show cause as issued by the Honorable Douglas L. Edmonds, judge of this court, on the 23rd day of July, 1936.

1893

2.

Your respondent, Robert Casamajor, alleges that he is the owner and holder of non-cancellable policy No. 4618790 issued by The Pacific Mutual Life Insurance Company of California, a corporation, on the 9th day of July, 1921, to and in favor of your respondent, Robert Casamajor. Your respondent, Walter A. Barnes, alleges that he is the owner and holder of non-

- 1894 cancellable policy No. 4624042 issued by The Pacific Mutual Life Insurance Company of California, a corporation, on the 15th day of March, 1922, to and in favor of your respondent, Walter A. Barnes. Your respondent, Paul V. Barnes, alleges that he is the owner and holder of non-cancellable policy No. 4624041 issued by The Pacific Mutual Life Insurance Company of California, a corporation, on the 6th day of June, 1922, to and in favor of your respondent, Paul V. Barnes.
- 1895 Your respondent, Clarence August Siegfried, alleges that he is the owner and holder of non-cancellable policy No. 4655494 issued by The Pacific Mutual Life Insurance Company of California, a corporation, on the 30th day of April, 1925, to and in favor of your respondent, Clarence August Siegfried. That under the terms of said policies an annual premium is required to be paid by your respondents and each of them to The Pacific Mutual Life Insurance Company of California.
- 1896 Your petitioners and each of them allege that they have paid said annual premiums as and when due, that said policies are in full force and effect, and were in full force and effect on the 22nd day of July, 1936, at the time of the filing of these proceedings herein.

3.

Your petitioners and each of them object to the court making any order confirming and approving, or confirming or approving or ratifying the

1897 proposed plan by which the assets of The Pacific Mutual Life Insurance Company of California, a corporation, have been transferred or are to be transferred to a new corporation known as Pacific Mutual Life Insurance Company; object to the confirmation and approval of the execution and delivery of a deed and bill of sale by Samuel L. Carpenter, Jr. as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California transferring and setting over to Pacific Mutual Life Insurance Company the assets of The Pacific Mutual Life Insurance Company of California, and object to any order approving the terms and conditions upon which it is proposed to make said transfer, to confirm said transfer, to approve said transfer, to-wit, the rehabilitation, sale and transfer of assets and reinsurance plan and agreement as proposed July 22, 1936, by Samuel L. Carpenter, Jr. as Insurance Commissioner of the State of California.

4.

For ground of said objection your respondents and each of them allege that The Pacific Mutual Life Insurance Company of California was, on the 31st day of December, 1935, and has been at all times since said date, insolvent, and that it had been advised by its actuaries for several years prior to December 31, 1935, that it could not continue to write non-cancellable policies at the premium which it was then and thereafter

1900 charging to the policy holder. That there is a deficiency, as your petitioners and each of them are informed and believe and therefore allege, of approximately \$23,000,000.00. That the eight directors of the old company, The Pacific Mutual Life Insurance Company of California, who for several years past have directed the destinies and policies of said company, are now the directors purportedly selected by Samuel L. Carpenter, Jr. to be the directors of the new Pacific Mutual Life Insurance Company, the company alleged to have been formed by Samuel L. Carpenter, Jr., and to whom he is proposing to transfer and sell the assets of the old company.

5.

1902 That the Insurance Commissioner has attempted to act and is acting arbitrarily and capriciously and in disregard of the established rules of law, and proposes by the said transfer and by the proposed application to transfer to obtain the judicial sanction and approval of this court to an arbitrary act, an act which will deprive your petitioners and the other persons, policy holders of the same class, of their contract rights without due process of law and in violation of the Fourteenth Amendment to the Constitution of the United States. That the proposed act of Samuel L. Carpenter, Jr. as Insurance Commissioner of the State of California will, if confirmed by this court, deprive your petitioners of their property without due process

1908 of law and will deprive thousands of other persons similarly situated of their property without due process of law and without notice and without affording the class to which these respondents belong, their day in court.

6.

1904 Petitioners and each of them allege that the proposed plan, if carried out, would in effect transfer all of the assets of the old company, The Pacific Mutual Life Insurance Company of California, together with the reserves created for the benefit of each class of policy holder, together with the reserve created for non-cancellable income policies, to the new corporation, Pacific Mutual Life Insurance Company. That the new company does not propose to be bound by the terms of the policies held by your petitioners and each of them and other policy holders similarly situated, but does propose to take the reserves for the benefit of such holders of the non-cancellable income policies as may agree to the terms which are stated in the proposed plan. That under the terms of said proposed plan the policies of your petitioners and the other non-cancellable income policy holders are destroyed, the terms of the policies are changed, and in the event your petitioners do not consent to such destruction and change then your petitioners are left without a remedy, and the court by the proposed order cancels the policies of your petitioners and performs and does an act at the request and instance

1905

1906 of The Pacific Mutual Life Insurance Company of California which it, the said company, could not under the terms of its agreements with your petitioners, do. That under the terms of the agreements between your petitioners and each of them and The Pacific Mutual Life Insurance Company of California the policies are, as to your petitioners, non-cancellable. That your petitioners and others in the same class have created a trust fund known as a reserve; that said
1907 funds are held in trust and were held in trust by The Pacific Mutual Life Insurance Company of California, and of said trust your petitioners and others of the same class are beneficiaries. The proposed plan attempts to create different terms, different beneficiaries, the elimination of part of the beneficiaries, the ignoring of the rights of the beneficiaries, and the transfer of said trust funds to a new and different trustee, Pacific Mutual Life Insurance Company, without
1908 the consent and against the will of the beneficiaries including your petitioners.

7.

Your respondents and each of them allege this court is without jurisdiction to alter, vary and amend the terms of their contracts or the terms of their non-cancellable income policies. That this court is without jurisdiction to vary the terms of their contracts and/or to place beyond the reach of and the benefit of your petitioners the trust fund created under the terms of their

1909 contracts for their and the benefit of others similarly situated. Your petitioners and each of them allege this court is without jurisdiction and it is contrary to law to transfer and give to others funds held in trust for the benefit of your petitioners and others similarly situated.

8.

Petitioners and each of them allege that it is unjust, inequitable and an arbitrary act of the Corporation Commissioner, not authorized or
1910 justified by the law or the facts, and the confirmation of the proposed agreement would do great, serious and irreparable injury to your petitioners. Your petitioners and each of them allege that because of their increased ages, to-wit, the elapse of time from the making of their original non-cancellable income policies as hereinbefore set forth and the present date, in the case of your petitioner, Robert Casamajor, a period of fifteen years, in the case of your petitioners, Walter A. Barnes and Paul V. Barnes,
1911 a period of fourteen years, and in the case of your petitioner, Clarence August Siegfried, a period of eleven years, and because of the change of their condition of health, to-wit, your petitioners and each of them allege they are in much poorer and impaired health than they were at the time of the taking out of said policies (your petitioners being in good and sound health at the time of the issuance of their respective policies), that petitioners are unable to obtain in-

- 1912 surance of the same type from any other existing insurance company and will continue to be unable to obtain a similar policy or similar insurance elsewhere throughout the world. That because of the increase of ages and a change in physical conditions your petitioners, if they were able to obtain insurance, would be compelled to pay an exorbitant and impossible premium therefor. Petitioners allege that they have a vested and fixed right in and to the reserves created by them and by persons holding policies of the same type in the non-cancellable group.
- 1913

Wherefore, your petitioners and each of them pray, on behalf of themselves and all other persons similarly situated, that the court deny the petition of Pacific Mutual Life Insurance Company, and that the court make such other and further order as is meet in the premises.

1914

ROBERT CASAMAJOR,
WALTER A. BARNES,
PAUL V. BARNES,
CLARENCE AUGUST SIEGFRIED,
HAHN & HAHN,
By JOSEPH G. PYLE,
Their Attorneys.

Verified.

Endorsed: Filed Aug. 19, 1936, 3:54 p. m.
L. E. Lampton, county clerk; by C. H. Holdredge, deputy.

1915 In the Superior Court of the state of California in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, respondent, Pacific Mutual Life Insurance Company, intervenor. No. 404673.

Return of Wales Mac Perdue to Order to Show Cause.

1916 Comes now Wales Mac Perdue, a policy holder and person interested in the above entitled proceedings and files through his attorney, Henry C. Huntington, this, his return to the order to show cause issued by the above entitled court on the 23rd day of July, 1936, and his objections to the proceedings in said cause as follows:

I.

That at all times herein mentioned, objector was and now is, the owner and holder of Non-
1917 cancellable Income Policy Number 4647283 and Policy Number 536351, issued by The Pacific Mutual Life Insurance Company, the respondent above named; that all premiums due upon the policies aforesaid have been paid and said policies are now in full force and effect.

II.

Objector objects to the

a. Confirming and approving and ratifying the permission given with respect to that certain plan and agreement of rehabilitation, sale and

1918 transfer of assets and reinsurance to show cause issued herein on the 23rd day of July, 1936, and the carrying out of the terms and provisions thereof;

b. The confirming and approving the action of Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and the action of Pacific Mutual Life Insurance Company, in making, executing and carrying out that certain agreement provided for in said plan and agreement, a copy of which agreement as executed, is attached to the petition referred to in said order to show cause as Exhibit B and that certain amended agreement, a copy of which is attached to said petition as Exhibit D;

c. Confirming and approving the execution and delivery of the deed and bill of sale attached to the petition referred to in said order to show cause as Exhibit C; and the action of said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, and as liquidator of said The Pacific Mutual Life Insurance Company of California, in transferring and setting over to said Pacific Mutual Life Insurance Company, all of the assets of said The Pacific Mutual Life Insurance Company of California;

d. Each, every and all of the proceedings taken and had up to and including the issuance of said order to show cause on the 23rd day of

1921 July, 1936, by the Honorable Douglas L. Edmonds, judge of the above entitled court;

e. Each, every and all of the proceedings proposed to be taken and had in connection with the above entitled proceedings.

III.

The objections aforesaid are made upon the following grounds, to-wit:

1922 a. That said permission and order given with respect to said plan and agreement of rehabilitation is unlawful and void for the reason that no hearing of motion for said permission and order was had as required by section 1016 of the Insurance Code of the state of California;

b. That the proposed plan of rehabilitation is not the best possible plan for the protection of this objector and other policy holders in The Pacific Mutual Life Insurance Company of California similarly situated;

1923 c. That said plan, if adopted or approved by this court, will render the policy owned and held by this objector, practically worthless;

d. That said plan undertakes to substitute some fractional liability by the Pacific Mutual Life Insurance Company for the obligations of The Pacific Mutual Life Insurance Company of California to this objector;

e. That said plan, if carried out, would constitute a violation of this objector's rights under sections 7, 11, 13, 16, 21 and 22 of article 1 and section 1 of article 3, and section 1 of article 12

1924 of the Constitution of the state of California, and also section 1 of the 14th amendment to the Constitution of the United States of America.

IV.

This objector objects to any plan or scheme which would impair in any manner or way, the obligation of this objector's contract with The Pacific Mutual Life Insurance Company of California.

V.

1925 This objector objects to all proceedings and orders heretofore or hereafter made by the above entitled court in the above proceeding on the ground that each, every and all of the laws and statutes upon which such proceedings or orders were based, are, and each of them is unconstitutional and void.

VI.

1926 Objector objects to each, every and all of the orders heretofore made in the above entitled proceeding on the grounds and for the reason that the true facts of the case could not and would not justify the making of said order.

VII.

Objector hereby refers to the objections heretofore or hereafter filed by all other persons in a similar situation, and to complaints in intervention heretofore or hereafter filed by persons in a similar situation as this objector in respect to the above entitled proceedings, and by such

1927 reference, hereby adopts the said objections and said complaints in intervention of said persons and incorporates the same herein as a part of this return.

Wherefore, this objector prays that the objections hereinbefore taken to the proceedings in the above entitled matter be allowed and sustained, and that appropriate orders be made by the above entitled court setting aside and vacating each, every and all of the orders heretofore made in 1928 the above entitled proceedings and restoring this objector to the same status that he occupied before said proceedings were instituted.

HENRY C. HUNTINGTON,

HENRY C. HUNTINGTON,

Attorney for Objector.

• Verified.

Endorsed: Received copy of the within return to O. S. C. this 19th day of August, 1936.
1929 O'Melveny, Tuller & Myers, M. A. T., attorney for Pac. Mutual Life Ins. Co.

Received copy of the within return this 19 day of Aug., 1936. U. S. Webb, attorney general, John L. Flynn, deputy, attorneys for plaintiff.

Received copy of the within return, Asa V. Call, atty. for respondent, this 19 day of Aug., 1936.

Filed Aug. 19, 1936, 4:41 p. m. L. E. Lamp-ton, county clerk; by C. J. Bergquist, deputy.

1930 In the Superior Court of the state of California, in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. Pacific Mutual Life Insurance Company, intervenor, Arthur D. Wunner, intervenor. No. 404,673.

Complaint in Intervention.

1931 Leave of court so to do having been first obtained, Arthur D. Wunner hereby intervenes in the within action and for his complaint in intervention alleges as follows:

I.

At all times herein mentioned, Samuel L. Carpenter, Jr. has been and now is the duly appointed, qualified and acting Insurance Commissioner of the State of California.

II.

1932

At all times herein mentioned The Pacific Mutual Life Insurance Company of California has been and now is a California corporation organized and existing under and by virtue of the laws of the state of California, and at all said times to July 22, 1936, said corporation has been actively engaged in the life, health and accident insurance and annuity business in the state of California and elsewhere throughout the United

1933 States. Said corporation is hereinafter sometimes referred to as "Old Company".

III.

At all times herein mentioned since about July 22, 1936, Pacific Mutual Life Insurance Company has been and now is a corporation organized and existing under and by virtue of the laws of the state of California. Said corporation is hereinafter sometimes referred to as the "New Company".

1934

IV.

At all times herein mentioned intervenor Arthur D. Wunner, has been and now is general agent of the Old Company at Omaha, Nebraska.

Intervenor has heretofore carried on business as general agent of the Pacific Mutual Life Insurance Company of California and has negotiated and sold innumerable policies of insurance in the said company. By virtue of this fact and by the terms of his contracts with said company, intervenor is entitled to receive renewals on such policies. The renewals to which intervenor is entitled for the period of his lifetime upon non-cancellable policies in the said company amount to the sum of two hundred (\$200) dollars per month, or thereabouts. Intervenor now is forty-eight (48) years of age. Intervenor is further entitled to receive from said company by virtue of contracts made with them, the sum of one thousand five hundred (\$1,500) dollars or there-

1935

1936 abouts, as commissions on policies after lapsation.

V.

On or about July 22, 1936, petitioner herein, as Insurance Commissioner of the State of California, filed in the within court an application for an order of said court appointing him conservator of said Old Company and thereafter on the same day an order of said court was made and entered under and by virtue of the terms of which said petitioner was appointed conservator of said Old Company and all its business, assets and affairs, and said petitioner was ordered to take possession forthwith of all the books, records, property and assets of said Old Company and as conservator to conduct its business for the benefit of its policy holders, creditors and stockholders and of the public in general.

VI.

1938 On July 22, 1936, and concurrently with the filing of the application for appointment of conservator hereinabove in paragraph V referred to, said petitioner filed in the within court an application for an order to liquidate, and thereafter and on the same day an order of said court was made and entered under and by virtue of the terms of which said petitioner was appointed liquidator of the assets and business of said Old Company. All of the right, title and interest of

1939 said Old Company in and to its assets and property was vested and confirmed in said petitioner as liquidator, and said petitioner as liquidator was ordered to conduct, manage and operate the business of said Old Company, to wind up and liquidate its business and to formulate, prepare and submit forthwith if possible for the approval of said court a plan and agreement of reinsurance and rehabilitation or sale and transfer of assets.

1940

VII.

On July 22, 1936, and concurrently with the filing of the applications hereinabove in paragraphs V and VI referred to, said petitioner filed in the within court a petition for an order permitting, approving and authorizing Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement of said Old Company and thereafter and on the same day an order of said court was made and entered approving said proposed plan and agreement; ordering said petitioner forthwith to organize a new corporation and to subscribe to its capital stock by the use of funds and assets under his control as liquidator of said Old Company, authorizing him forthwith to execute an agreement in form substantially as set forth in said plan, ordering said petitioner forthwith to transfer and set over to said New Company all of the assets of the Old Company, except the stock of said New Com-

1941

1942 pany and except any claims which the Old Com-
pany might have against any of its present or
past officers, directors or employees or against
any other person by reason of wrongful or illegal
acts or omissions of any of such past or present
officers, directors or employees, authorizing and
ordering said petitioner to do any and all things
necessary, desirable or proper to carry out the
terms of said plan and agreement, and directing
the officers, directors, agents and employees of
1943 the Old Company to cooperate with and assist
said petitioner and the New Company in the ef-
fectuation of said plan by the execution of such
documents and the doing of such acts in con-
nection therewith as might be requested of them
by said petitioner. A copy of said plan and
agreement is attached to the petition for approval
thereof on file herein and by this reference the
same is incorporated in this complaint in inter-
vention as though fully set forth.

1944

VIII.

On July 23, 1936, said petitioner filed in the
within court a petition for approval of an amend-
ment to said plan and agreement and thereafter
on the same day said court made and entered its
order approving said amendment. A copy of
said amendment is attached to said petition for
an order approving the same and by this refer-
ence it is incorporated herein as though fully set
forth.

IX.

1945

Immediately upon the making of the orders hereinabove referred to said petitioner and the New Company executed said plan and agreement and thereupon all of the assets of the Old Company, with the exceptions hereinabove referred to, were transferred and conveyed to the New Company and ever since that time said New Company has been and now is in the sole and exclusive possession thereof and said company

1946

has been and now is conducting the insurance and annuity business heretofore conducted by the Old Company.

X.

The intervenor is informed and believes and therefore alleges that all of the orders hereinabove in paragraphs V, VI and VII referred to, were made concurrently and contemporaneously and without the lapse of any time other than the time required for the signing thereof. That no hearing or other proceeding in connection therewith was had by or before the within court and that no evidence in connection therewith was presented to or by the said court other than the allegations of the various applications and petitions hereinabove referred to. The intervenor is further informed and believes and therefore alleges that at no time prior to or concurrently with the making of the order hereinabove in

1947

1948 paragraph VIII referred to, was there presented to the within court nor did the court have any impartial or independent appraisals, data or information upon which to base a consideration and determination of the fairness, equity and legality of the proceedings herein taken and/or of said plan and agreement.

XI.

1949 At no time prior to or concurrently with the making of any of said orders was any notice thereof or of the proceedings for the procurement thereof given to intervenor, nor was intervenor or any other agent of the Old Company ever given any right or opportunity to appear and be heard in or in connection with said proceedings and/or the making of said orders or any of them. The consent of the agents of the Old Company to said proceedings has never been requested or obtained nor has the consent of said agents or any of them to the aforesaid transfer and conveyance of assets ever been requested or obtained.

1950 In this connection the intervenor alleges that the assets so transferred and conveyed to the New Company were and are substantially all of the assets of the Old Company and were all of the assets of said Old Company which at that time were being or theretofore had been used in the conduct and business of said Old Company.

1951

XII.

1952

1953

The intervenor is informed and believes and therefore alleges that at some time prior to July 22, 1936, the exact date being unknown to him, the directors of the Old Company or, some of them acting in concert and collaboration with said petitioner formed a plan or design to eliminate the interests of certain of the shareholders, policy holders, agents and creditors of the Old Company in and to its business and assets, to create a new corporation which would take over and conduct and operate the assets and business of the Old Company, thereby to hinder, delay and defraud certain of the policy holders and creditors of said Old Company in the collection and satisfaction of their claims, whereas other policy holders and creditors of said Old Company would be preferred in the collection and satisfaction of their claims; and agreed that in order to accomplish said plan and design, proceedings substantially such as those which have been taken herein should be taken for the purpose of accomplishing said transfer of assets, delay and hindrance of said creditors and preference of others. The intervenor is further informed and believes and therefore alleges that the proceedings had and taken herein have been and are but incidents in and part of said pre-conceived plan and design.

XIII.

1954

The intervenor is informed and believes and therefore alleges that the various findings and determinations of said petitioner as to the condition of the Old Company and the necessity for taking the various proceedings hereinabove alleged to have been taken were arbitrary and capricious and not supported by the facts in that said Old Company was not at any of the times said proceedings were taken insolvent or in such

1955

condition that its further transaction of business would have been hazardous to its policy holders or creditors or to the public. The intervenor is further informed and believes and therefore alleges that the finding and determination of said Commissioner that further efforts to proceed under section 1011 of the Insurance Code would be futile and not to the best interests of its policy holders, creditors, stockholders and the public generally and that the interests of such

1956

persons would be served by granting an order of liquidation, were and are arbitrary and capricious, unfounded in fact and made without any independent and impartial data or information to support them and without any attempt by said petitioner to manage, operate or conduct the business and affairs of said Old Company as conservator and without any attempt on his part by such actual operation to determine whether conservation could be effected and liquidation avoided.

XIV.

1957

1958

1959

The intervenor further alleges that said purported Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement was and is unfair and inequitable and in violation and disregard of the rights of the agents of said Old Company in that said plan and particularly paragraph 14 thereof, does not preserve to said agents the full benefit of their interest in the assets and business of the said Old Company and their rights as creditors of said company, but on the contrary transfers and preserves for the benefit of said New Company substantially all of the interest of said agents as creditors in the assets and business of the Old Company and further in that the consideration to be paid by the New Company for the Old Company's assets and business is grossly inadequate and substantially less than the fair value of said assets, and further in that intervenor is informed and believes and therefore alleges that no attempts were made prior to the consummation of said plan and agreement to obtain any offers from others for the purchase of said assets and business or reinsurance of the policy holders of the Old Company or rehabilitation of the Old Company.

XV.

By reason of the foregoing facts, the proceedings had and taken and the orders made and

1960 entered herein are and each of them is void, irregular, arbitrary and without authority in law and said proceedings and orders are and each of them is void and unconstitutional in that they deprive and have deprived the intervenor and others of their property without due process of law in violation of section 1 of article XIV of the amendments to the Constitution of the United States and of section 13 of article I of 1961 the Constitution of the state of California, and further in that they impair and have impaired the obligation of the contracts of said intervenor in violation of section 10 of article I of the Constitution of the United States and of section 16, article I of the Constitution of the state of California, and further that the statute under and in pursuance of which the said proceedings and orders purport to have been taken and made, be- 1962 ing article 14 of chapter 1 of part 2 of the Insurance Code of the state of California, is void and unconstitutional in so far as it authorizes and permits said proceedings and orders, in that it violates and contravenes the provisions of the constitutions of the United States and of the state of California hereinabove mentioned.

Wherefore, the intervenor prays that said purported Rehabilitation Sale and Transfer of As-

1963 sets and Reinsurance Plan and Agreement be not approved; that all proceedings had and taken and all proceedings heretofore made herein be vacated and set aside; that the intervenor's costs incurred herein, including a reasonable attorney's fee be allowed and that he have such other and further relief as to the court may seem proper.

PAUL OVERTON and

R. G. BLANCHARD,

By R. G. BLANCHARD,

Attorneys for Intervenor.

Verified.

Endorsed: Received copy of the within this 20th day of Aug., 1936. Asa V. Call, attorney for Pac. Mutual Life Ins. Co. of Calif.

Received copy of the within this 20th day of August, 1936. O'Melveny, Tuller & Myers, M. A. T., Attorney for Pac. Mutual Life Ins. Co.

Received copy of the within this 20th day of August, 1936. U. S. Webb, attorney general, John L. Flynn, deputy, attorneys for petitioner.

Filed Aug. 20, 1936, 9:55 a. m. L. E. Lamp-ton, county clerk; by E. T. Crozier, deputy.

1966 In the Superior Court of the state of California in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, respondent, Pacific Mutual Life Insurance Company, intervenor. No. 404673.

Return of Clara Margaret Grannan and Edward Everet White to Order to Show Cause.

1967

Come now Clara Margaret Grannan and Edward Everet White, policy holders and persons interested in the above entitled proceedings and file this, their return to the order to show cause issued by the above entitled court on the 23rd day of July, 1936, and their objections to the proceedings in said cause as follows:

I.

1968 That at all times herein mentioned, objectors were and now are, the owners and holders of non-cancellable income policies; the objector, Clara Margaret Grannan, was and now is, the owner and holder of Non-cancellable Policy Number 754631, issued by The Pacific Mutual Life Insurance Company of California, the respondent above named, which policy contains a total disability benefit clause, and that all premiums due upon said policy have been paid and said policy is now in full force and effect.

1969 The objector, Edward Everet White, was and now is, the owner and holder of Non-cancellable Policy Number 413699, issued by The Pacific Mutual Life Insurance Company of California, the respondent above named, which policy contains a total disability benefit clause, and that all premiums due upon said policy have been paid and said policy is now in full force and effect.

II.

Objectors object to the

1970 A. Confirming and approving and ratifying the permission given with respect to that certain plan and agreement of rehabilitation, sale and transfer of assets and reinsurance of The Pacific Mutual Life Insurance of California, which said plan and agreement of rehabilitation is referred to in the order to show cause issued herein on the 23rd day of July, 1936, and the carrying out of the terms and provisions thereof;

1971 b. The confirming and approving the action of Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and the action of Pacific Mutual Life Insurance Company, in making, executing and carrying out that certain agreement provided for in said plan and agreement, a copy of which agreement as executed, is attached to the petition referred to in said order to show cause as Exhibit B and that certain

1972 amended agreement, a copy of which is attached to said petition as Exhibit D;

c. Confirming and approving the execution and delivery of the deed and bill of sale attached to the petition referred to in said order to show cause as Exhibit C; and the action of said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, and as liquidator of said The Pacific Mutual Life Insurance Company of California, in transferring and setting over to said Pacific Mutual Life Insurance Company, all of the assets of said The Pacific Mutual Life Insurance Company of California;

d. Each, every and all of the proceedings taken and had up to and including the issuance of said order to show cause on the 23rd day of July, 1936, by the Honorable Douglas L. Edmonds, judge of the above entitled court;

1974 C. Each, every and all of the proceedings proposed to be taken and had in connection with the above entitled proceedings.

III.

The objections aforesaid are made upon the following grounds, to-wit:

a. That said permission and order given with respect to said plan and agreement of rehabilitation is unlawful and void for the reason that no

1975 hearing of motion for said permission and order was had as required by section 1016 of the Insurance Code of the state of California;

b. That the proposed plan of rehabilitation is not the best possible plan for the protection of these objectors and other policy holders in The Pacific Mutual Life Insurance Company of California similarly situated;

c. That said plan, if adopted or approved by 1976 this court, will render the policies owned and held by these objectors, practically worthless;

d. That said plan undertakes to substitute some fractional liability by the Pacific Mutual Life Insurance Company for the obligations of The Pacific Mutual Life Insurance Company of California to these objectors.

e. That said plan, if carried out, would constitute a violation of these objectors' rights under 1977 sections 7, 11, 13, 16, 21 and 22 of article 1 and section 1 of article 3, and section 1 of article 12 of the Constitution of the state of California, and also section 1 of the 14th amendment to the Constitution of the United States of America.

IV.

These objectors object to any plan or scheme which would impair in any manner or way, the obligation of these objectors' contract with The

1978 Pacific Mutual Life Insurance Company of California.

V.

These objectors object to all proceedings and orders heretofore or hereafter made by the above entitled court in the above proceeding on the ground that each, every and all of the laws and statutes upon which such proceedings or orders were based, are, and each of them is, unconstitutional and void.

1979

VI.

Objectors object to each, every and all of the orders heretofore made in the above entitled proceeding on the grounds and for the reason that the true facts of the case could not and would not justify the making of this order.

VII.

1980 Objectors hereby refer to the objections heretofore or hereafter filed by all other *person* in a similar situation, and to complaints in intervention heretofore or hereafter filed by *person* in a similar situation as these objectors in respect to the above entitled proceedings, and by such reference, hereby adopt the said objections and said complaints in intervention of said persons and incorporate the same herein as a part of this return.

Wherefore, these objectors pray that the objections hereinbefore taken to the proceedings in

981 the above entitled matter be allowed and sustained and that appropriate orders be made by the above entitled court setting aside and vacating each, every and all of the orders heretofore made in the above entitled proceeding and restoring these objectors to the same status that they occupied before said proceedings were instituted.

Dated: August 20, 1936.

CLARA MARGARET GRANNAN,

EDWARD EVERET WHITE,

By M. W. PURCELL,

Their Attorney.

982
Endorsed: Received copy of the within return of Clara Margaret Grannan and Edward Everett White to order to show cause this 20th day of August, 1936, U. S. Webb, attorney general, by John L. Flynn, deputy, attorney for petitioner.

983
Received copy of the within return of Clara Margaret Grannan and Edward Everett White to order to show cause this day of August, 1936. Asa V. Call & O'Melveny, Tuller & Myers, by W. B. Carman, Jr., attorney for Pac. Mut. L. I. Co.

Filed Aug. 20, 1936, 3:49 p. m. L. E. Lamp-ton, county clerk; by C. H. Holdredge, deputy.

1984 In the Superior Court of the state of California in and for the county of Los Angeles

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404-673.

1985 **Objections of Ben S. Hunter, Appearing in Response to "Order to Show Cause With Respect to Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement" Dated August 14, 1936.**

Comes now Ben S. Hunter, one of the persons upon whom the above entitled order to show cause has been duly served, and in response to the same respectfully shows:

I.

1986 That he is the owner of the following policies issued by The Pacific Mutual Life Insurance Company of California, namely:

Life Insurance Policy No. 425051 . . . \$ 7000.00

Life Insurance Policy No. 459268 . . . 8000.00

Non-Cancellable Income Policy
No. 2667857 10000.00

Non-Cancellable Income Policy
No. 4637715 5000.00

Accident Insurance Policy No. 4734845 20000.00

all of which are now in full force and effect and upon which all premiums which have matured and become due have been paid.

II.

1987 That he objects to the making of each of the orders described in said Order to Show Cause With Respect to Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement upon the following grounds:

(a) That the orders sought to be ratified are void in that they were made by a judge having an adverse interest; that they were made without due or adequate notice, and that the court is
1988 without power or jurisdiction to ratify or approve a void order;

(b) That the court is without authority to authorize the organization of a new company, as provided for in said orders and in said so-called "Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement" (hereinafter for the purpose of convenience referred to as the "Rehabilitation Agreement");

1989 (c) That no authority exists in law which authorizes or permits the Insurance Commissioner of the State of California to use the assets of an insolvent insurance company for the purpose of organizing a new insurance company, and that the said Insurance Commissioner is without authority, as commissioner, conservator, liquidator or otherwise, to purchase stock in an insurance company;

(d) That the moneys which the said Insurance Commissioner proposes to use for the pur-

- 1990 chase of such stock, and the moneys which the Insurance Commissioner has used and which he proposes to use in paying the expenses incident to the carrying out of the Rehabilitation Agreement, all properly belong to and should be a part of the reserves apportioned to the non-cancellable income policies, and that the Insurance Commissioner is without power to use such assets for the purpose of protecting policy holders of another and different class;
- 1991

(e) That the Insurance Commissioner and the court are, and that each of them is, without power to prefer one class of policy holders over another class, and that said attempted sale of assets is a sale in name only and is made for the purpose of accomplishing in an apparently legal manner that which it is unlawful to do;

- 1992 (f) That the court has no power to prefer holders of life insurance policies in The Pacific Mutual Life Insurance Company of California over holders of non-cancellable income policies in the same company;

(g). That the said Insurance Commissioner is without power to enter into a contract of re-insurance which prefers one class of risks over another;

(h) That the said Insurance Commissioner is without power to part with the assets secur-

1993 ing the contracts of insurance of The Pacific Mutual Life Insurance Company of California without reinsuring the risks covered thereby, and that he is without power to reinsure a part only of the risks;

(i) That the orders herein sought to be ratified are unjust, unconscionable and inequitable;

(j) That this court of equity is lending its aid to prefer one class of creditors over another
1994 class of creditors

(k) That it is an abuse of discretion for the said Insurance Commissioner to transfer assets of an insolvent company to a new company and entrust the management of the assets of the insolvent company to the same management which led the company into its insolvency, and that it is entirely beyond the authority conveyed upon him by statute;

1995 (l) That the orders herein sought to be ratified permitting the transfer of the assets of the insolvent company to a new company, thereby placing all of the assets of the company behind the life insurance policies and disregarding the obligations of the insolvent company to its holders of non-cancellable income policies, violates section 10 of article I of the Constitution of the United States; and

1996 (m) That the orders herein sought to be ratified permitting the transfer of the assets of the insolvent company to a new company, thereby placing all of the assets of the company behind the life insurance policies and disregarding the obligations of the non-cancellable income policies, violates the XIVth Amendment to the Constitution of the United States.

1997 Wherefore, this objector prays that said Order to Show Cause With Respect to Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement be dismissed; that none of the orders set forth therein be made, and that each of the orders heretofore made and therein sought to be ratified, be vacated and set aside.

BEN S. HUNTER,

BEN S. HUNTER,

In Propria Persona.

Verified.

1998 Endorsed: Received copy of the within objections of Ben S. Hunter this 20 day of August, 1936., attorney for petitioner.

Received copy of the within
this day of, 19..... O'Melveny,
Tuller & Myers, attorney for New Company.

Filed Aug. 20, 1936, 10:10 a. m. L. E. Lampton, county clerk; by Paul F. Rau, deputy.

1999 In the Superior Court of the state of California in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Pacific Mutual Life Insurance Company, intervenor, Neil S. McCarthy, intervenor. No. 404-673.

2000 **Objections and Answer of Neil S. McCarthy to Petition With Respect to Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement Dated August 14, 1936; Application for Order to Liquidate Dated August 13, 1936; and Order to Show Cause Dated August 14, 1936.**

2001 Comes now Neil S. McCarthy, intervenor herein, and, in response to the order to show cause with respect to rehabilitation, etc., dated August 14, 1936 heretofore issued herein, the petition with respect to rehabilitation, sale, etc., heretofore filed herein dated August 14, 1936, and to the application for order to liquidate heretofore filed herein dated August 13, 1936, answers and objects thereto upon the following grounds:

I.

That the proposed plan of rehabilitation, sale, transfer of assets and reinsurance will not pre-

2002 serve the value of the assets of respondent for the benefit of its creditors and policyholders.

II.

2003 That said policyholders' and creditors' rights in the order named are paramount to the claims of stockholders of the corporation; that the equitable rights of said policyholders and particularly said holders of non-cancellable policies is of the very highest order; first, for the reason that the money paid to respondent under and upon such policies was paid under and pursuant to the highest degree of trust; and, second, that said policyholders have grown older and their rights and privileges are forever gone except as defined and granted under said policies.

III.

2004 That all of the assets of respondent company should be marshaled and impounded for the purpose of preserving and protecting the policyholders' rights and the creditors of said company; that, if a rehabilitation plan is at all questionable, the assets of said respondent company should be liquidated to the end that the policies issued by said respondent company be re-insured under a substantial and financially able company.

IV.

That the plan proposed will not maintain the continuity of the policyholders' policies; that, while it is fair and correct that the business of

2005 respondent company should be protected and maintained as a going concern, such status is not of the first or of paramount importance.

V.

That the non-cancellable policies now in existence and issued by the said respondent company must be preserved and that the plan proposed seeks to cancel or at least partially destroy said non-cancellable policy rights; that the company proposing to take over the assets under said plan is untried, has no material assets, has no substantial capital and no reserve sufficient to protect the rights of intervenor and said policyholders; that all the facts set forth under the petition herein referred to show that said plan is not feasible or workable and does not provide a plan which will and can protect the interests of the policyholders.

VI.

2007 That, if it be determined that said respondent company is insolvent and cannot be further carried on, that your intervenor is informed and believes and, upon such information and belief, alleges that there are better and bids more fair than made under the proposed plan for the assets and for the privilege of reinsuring the outstanding policies that could be obtained from old and established companies.

2008

VII.

That the proposed plan will give to certain parties inequitable advantages over others.

2009

Wherefore, your intervenor prays that petitioner's prayer for relief, contained in his petition with respect to rehabilitation, etc. and the whole thereof be denied and particularly that the ratification, approval and confirmation of the orders and proceedings heretofore taken herein be denied; that the matter be held in abeyance either in the hands of the present conservator or in the hands of one to be selected by the Court; that a general scheme of financial responsibility be set up preliminary to any bidder making a bid to take over the respondent company and that a feasible plan be first worked out to save and protect the rights and interests of all parties concerned; and for whatever other relief the Court may deem proper.

2010

LEROY ANDERSON and
NEIL S. MCCARTHY,

Attorney for Neil S. McCarthy, Intervenor.

Endorsed: Received copy of the within objection this 20th day of Aug., 1936. U. S. Webb, attorney general; by John L. Flynn, deputy attorney for petitioner.

Filed 3:45 p. m., Aug. 20, 1936. L. E. Lamp-ton, county clerk; by C. H. Holdredge, deputy.

2011 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, v. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404673.

Return to Order to Show Cause.

2012 Come now Rupert B. Turnbull, William Weisman and Francis Adams, for themselves and for other non-cancellable policyholders similarly situated, and for a return to the respective orders to show cause issued by the court, particularly the order to show cause of August 13, 1936 signed by the Honorable Henry M. Willis, judge of this court, and the order to show cause with respect to rehabilitation, sale and transfer of assets as made by the Honorable Henry M. Willis, judge of this court, on the 14th day of August, 2013 1936, respectfully show:

I.

That they have heretofore petitioned this court and obtained leave of this court by an order duly made, executed and filed, permitting your petitioners to intervene on behalf of themselves and others similarly situated.

II.

That your petitioners and each of them are owners and holders of non-cancellable policies of

- 2014 insurance in favor of your petitioners and each of them, issued by The Pacific Mutual Life Insurance Company of California, your petitioner Rupert B. Turnbull having had his policy issued to him in September 1922; petitioner William Weisman having had his policy issued to him in 1921, and the petitioner Francis Adams having had his policy issued to him in 1922. Said policies and each of them are in full force and effect and were in full force and effect at the time of
- 2015 the filing of the petition of Samuel L. Carpenter, Jr. herein for the commencement of this action. That said policies and neither of them have been revoked or cancelled.

III.

- 2016 Your petitioners allege that there are in excess of forty-nine thousand (49,000) holders of non-cancellable policies situated similarly to your petitioners, and that there are outstanding in excess of forty-nine thousand policies of non-cancellable accident insurance issued by the respondent The Pacific Mutual Life Insurance Company of California.

IV.

Your petitioners, for themselves alone and for the persons similarly situated, appear and object to any order ratifying and approving the order of the Honorable Douglas L. Edmonds, judge of this court, made under the date of July 22, 1936, ratifying, approving and confirming the sale and

- 2017 transfer of the assets of The Pacific Mutual Life Insurance Company of California. Your petitioners object to the ratifying and approving or confirming of the order of the Honorable Douglas L. Edmonds, judge of this court, made under date of July 23, 1936, adopting the sale and transfer of assets and reinsurance agreement as attempted to have been made by the Insurance Commissioner Samuel L. Carpenter, Jr. Object to approving the plan and agreement of rehabilitation and the transfer and sale of assets as proposed by Samuel L. Carpenter, Jr., Insurance Commissioner, and object to the findings of the court heretofore made ex parte that the same is fair and equitable to all interested parties. Object to any order authorizing and ordering the petitioner to execute, as of July 22, 1936, the agreement referred to in the various petitions of Samuel L. Carpenter Jr. as "Exhibit A", being the sale and rehabilitation contract. Object to the ratifying, approving and confirming of the transfer to the new company of the assets of The Pacific Mutual Life Insurance Company of California, the old company. Object to the making of any order approving the terms and conditions under which the contract rights of your petitioners and those similarly situated are destroyed, altered and impaired. Your petitioners allege that on the 22nd day of July, 1936 and on the 23rd day of July, 1936, at the time of

- 2020 the filing of the respective petitions by the petitioner Samuel L. Carpenter, Jr. as Insurance Commissioner of the State of California, and at the time of the intervention herein by Pacific Mutual Life Insurance Company, at the time of the submission to this court, to-wit, to the Honorable Douglas L. Edmonds, of the petitions for the appointment of a conservator, the application for the appointment of a liquidator, the application for an order to liquidate, the petition with
- 2021 respect to rehabilitation, sale and transfer of assets, and at the time of the making of the orders on said petitions and each of them by the said Honorable Douglas L. Edmonds, the said Douglas L. Edmonds was disqualified to act, to hear said matters or make any order with respect to the subject matters of the said petitions and with respect to the orders which he did make on the 22nd day of July, 1936 and on the 23rd day of July, 1936 and each of said orders, in this: that
- 2022 Honorable Douglas L. Edmonds, judge, was the owner and holder of and asserting a claim under a policy of life insurance issued to him prior to the commencement of this proceeding by The Pacific Mutual Life Insurance Company of California, and as such was interested in the subject matter of these proceedings, and was particularly interested in the maintenance of the integrity of his own life insurance policy then and there in force. That when there was presented to the

2023 said Honorable Douglas L. Edmonds, the judge of this court, the proposed plan by which the assets of The Pacific Mutual Life Insurance Company of California were to be transferred to a new corporation, Pacific Mutual Life Insurance Company, under the terms of which, life insurance policies would be reinsured by the new company and protected with all of the reserves, created for life insurance policyholders, there was also presented as a part of the plan the express

2024 agreement that the new company should not be required to reinsure the forty-nine thousand non-cancellable policyholders, but might accept the full annual premium from such policyholders and scale down the benefits assured by the respective contracts of your petitioners by eighty per cent; that is to say, to pay your petitioners and allow your petitioners only twenty per cent of the benefits contracted to be made and paid to your petitioners in the event of a loss or losses by either

2025 or any of them. That then and there Douglas L. Edmonds, whether he was or was not conscious of said situation, was called upon to discriminate in favor of the class of policyholders of which he was one, and against the class to which your petitioners have the disadvantage to belong, to-wit, non-cancellable policyholders. That the said Douglas L. Edmonds was then and there disqualified because ~~he was~~ then and there interested in the subject matter of the proceeding

2026 and in the result which he was then and there about to decide. That the said Douglas L. Edmonds did then and there, whether or not he was then and there actively conscious of the same, discriminate against your petitioners, and did exercise his legal discretion against the rights of your petitioners without notice to your petitioners or either or any of them, without the service of process upon your petitioners or either or any
2027 of them, without giving your petitioners their day in court, without giving them an opportunity to be heard, and that your petitioners were not heard. That the orders complained of were made contrary to law and were and are in violation of the rights guaranteed to citizens of the State of California and of the United States by the Fourteenth Amendment to the Constitution of the United States and the Fifth Amendment
2028 to the Constitution of the United States, and that said orders deprive your petitioners of their vested rights and of their property without due process of law.

V.

Your petitioners allege that at the time of the making of contracts between themselves and each of them with The Pacific Mutual Life Insurance Company of California, the law existing at said

2029 time protected your petitioners in the enjoyment
of the terms of their contracts and each of them,
and that thereafter no law could be made or
established which impaired the rights of contract
of your petitioners and each of them. That the
laws under which the petitioner Samuel L. Car-
penter, Jr. as Insurance Commissioner, as con-
servator and as liquidator, attempts to act here-
under, have no force and effect and cannot be
2030 used to impair the rights of the contracts of your
petitioners and each of them. That the proposed
sale and transfer of assets is unjust and in-
equitable and deprives your petitioners of their
property without due process of law. That the
proposed transfer of assets and the sale as
already made, is in truth and in fact a transfer of
the assets of The Pacific Mutual Life Insurance
Company of California to a new corporation offi-
2031 cered and directed by the same financial and per-
sonal interests that governed, controlled and
wrecked The Pacific Mutual Life Insurance
Company of California, and that there has been
no actual change in the possession, control or
management of the officers, business or assets of
the respondent, the old company. That eight
of the directors of the old company, The Pacific
Mutual Life Insurance Company of California,

2032 are now the directors of the new Pacific Mutual Life Insurance Company. That the same employes, the same agents; the same servants, the same attorneys who acted for and on behalf of the old company are now the servants, agents, employes and attorneys of the new company. That the agencies established by the old company for the sale of policies are now and still are and always have been the agencies which have always
2033 handled the affairs of the old company, and are now operating as agencies for the new company.

VI.

That the non-cancellable policyholders, forty-nine thousand in number, have contributed approximately fourteen million dollars in premiums for the creation of a reserve to pay losses occurring in that class. That several million dollars
2034 remaining of said reserves have been transferred without notice to your petitioners, without affording them their day in court, to the new company. That your petitioners are beneficiaries of said trust fund and have not consented to or been given an opportunity to consent to a change of trustee or a change in the terms of said trust, or a change in the terms of said policies. That the said plan which has been made and which it is

2035 now proposed to again confirm, is confiscatory
as to the non-cancellable policyholders; though
fair, just and equitable to the life insurance
policyholders. That the plan and sale to
the new company transfers all of the assets,
both, those in the reserves and the general
assets, real property, good will and other
property, to the new corporation Pacific Mutual
Life Insurance Company, and deprives the non-
2036 cancellable group of forty-nine thousand persons
of their right to participate in those assets.

Wherefore, your petitioners pray that this
court may look through the form of said trans-
fer and see and recognize the substance of said
plan, and decree that the same is unjust, in-
equitable and unlawful, and that the court make
such order in the premises as will not confiscate
2037 the policies and contracts made and existing be-
tween your petitioners and the respondent, and
that the court will not as a court of equity lend
its aid, directly or indirectly, or through the
medium of the Insurance Commissioner of the
State of California, to the performance of acts
which are unjust and inequitable, and to the
performance of an act, to-wit, the breach of
contracts which the respondent itself could not

2038 under the terms of its own contracts do and perform; and for such other and further relief as to the court may seem proper.

RUPERT B. TURNBULL.

State of California, County of Los Angeles—ss.

Rupert B. Turnbull, being first duly sworn, deposes and says that he is one of the petitioners in the above entitled matter; that he has read the foregoing return to orders to show cause, 2039 knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated upon information or belief, and as to those matters he believes it to be true.

RUPERT B. TURNBULL.

Subscribed and sworn to before me this 19th day of August, 1936.

[Seal]

GEO. A. JUDSON.

2040 Notary Public in and for the County of Los Angeles, State of California.

Endorsed: Received copy of the within Return to Order to Show Cause this 19th day of August, 1936. O'Melveny, Tuller & Myers, M. A. T., attorney for Pac. Mutual Life Insurance Company; H. H. Benjamin, Spec. Deputy Ins. Comr., by B. L. Ramsay.

Filed 9:49 a. m. Aug. 20, 1936. L. E. Lamp-ton, county clerk; by E. T. Crozier, deputy.

2041 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, v. The Pacific Mutual Life Insurance Company of California, respondent. Pacific Mutual Life Insurance Company, intervenor. No. 404673.

Return of Vernon Bettin and William George Dickinson to Order to Show Cause.

2042 Come now Vernon Bettin and William G. Dickinson, policy holders and persons interested in the above entitled proceedings and file through their attorneys, Bettin, Painter & Wait, this their return to the order to show cause issued by the above entitled court on the 23rd day of July, 1936, and their objections to the proceedings in said cause as follows:

I.

2043 That at all times herein mentioned, objector, Vernon Bettin, was and now is the owner and holder of Non-cancellable Income Policy Number 4661809, issued by The Pacific Mutual Life Insurance Company of California, the respondent above named; that all premiums due upon the policy aforesaid have been paid and said policy is now in full force and effect.

That at all times herein mentioned, objector, William George Dickinson, was and now is the owner and holder of Non-cancellable Income Pol-

2044 icy Number 4642314, issued by The Pacific Mutual Life Insurance Company of California, the respondent above named; that all premiums due upon the policy aforesaid have been paid and said policy is now in full force and effect.

II.

Objectors object to the

2045 a. Confirming and approving and ratifying the permission given with respect to that certain plan and agreement of rehabilitation, sale and transfer of assets and reinsurance of The Pacific Mutual Life Insurance of California, which said plan and agreement of rehabilitation is referred to in the order to show cause issued herein on the 23rd day of July, 1936, and the carrying out of the terms and provisions thereof;

2046 b. The confirming and approving the action of Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California and as liquidator of The Pacific Mutual Life Insurance Company of California, and the action of Pacific Mutual Life Insurance Company, in making, executing and carrying out that certain agreement provided for in said plan and agreement, a copy of which agreement as executed, is attached to the petition referred to in said Order to Show Cause as Exhibit B and that certain amended agreement, a copy of which is attached to said petition as Exhibit D;

2047 c. Confirming and approving the execution and delivery of the Deed and Bill of Sale attached to the petition referred to in said Order to Show Cause as Exhibit C; and the action of said Samuel L. Carpenter, Jr., as Insurance Commissioner of the State of California, and as liquidator of said The Pacific Mutual Life Insurance Company of California, in transferring and setting over to said Pacific Mutual Life Insurance Company, all of the assets of said The
2048 Pacific Mutual Life Insurance Company of California;

d. Each, every and all of the proceedings taken and had up to and including the issuance of said Order to Show Cause on the 23rd day of July, 1936, by the Honorable Douglas L. Edmonds, Judge of the above entitled court:

e. Each, every and all of the proceedings proposed to be taken and had in connection with the
2049 above entitled proceedings.

III.

The objections aforesaid are made upon the following grounds, to-wit:

a. That said permission and order given with respect to said plan and agreement of rehabilitation is unlawful and void for the reason that no hearing of motion for said permission and order was had as required by Section 1016 of the Insurance Code of the State of California;

2050 b. That the proposed plan of rehabilitation is not the best possible plan for the protection of these objectors and other policy holders in The Pacific Mutual Life Insurance Company of California similarly situated;

c. That said plan, if adopted or approved by this court, will render the policy owned and held by these objectors, practically worthless;

2051 d. That said plan undertakes to substitute some fractional liability by the Pacific Mutual Life Insurance Company for the obligations of The Pacific Mutual Life Insurance Company of California to these objectors;

e. That said plan, if carried out, would constitute a violation of these objectors' rights under Sections 7, 11, 13, 16, 21 and 22 of Article 1 and Section 1 of Article 3, and Section 1 of Article 12 of the Constitution of the State of California, and also Section 1 of the 14th amendment to the Constitution of the United States of America.

IV.

These objectors object to any plan or scheme which would impair in any manner or way, the obligation of these objectors' contract with The Pacific Mutual Life Insurance Company of California.

2053

V.

These objectors object to all proceedings and orders heretofore or hereafter made by the above entitled court in the above proceeding on the ground that each, every and all of the laws and statutes upon which such proceedings or orders were based, are, and each of them is, unconstitutional and void.

VI.

2054

Objectors object to each, every and all of the orders heretofore made in the above entitled proceeding on the grounds and for the reason that the true facts of the case could not and would not justify the making of said order.

VII.

2055

Objectors hereby refer to the objections heretofore or hereafter filed by all other persons in a similar situation, and to complaints in intervention heretofore or hereafter filed by persons in a similar situation as these objectors in respect to the above entitled proceedings, and by such reference, hereby adopt the said objections and said complaints in intervention of said persons and incorporates the same herein as a part of this Return.

VIII.

2056

Objectors hereby make demand upon the old Pacific Mutual Life Insurance Company, the new Pacific Mutual Life Insurance Company, and Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, that they and each of them immediately furnish through auditors and appraisers, to be appointed by the court: (1) A complete audit of the business

2057

and affairs of the Pacific Mutual Life Insurance Company covering the last ten years, with particular reference to the stock and other transactions participated in by any director, officer or employee or agent of the company, and (2) a complete appraisement of the assets of the Pacific Mutual Life Insurance Company held by the Insurance Commissioner, this appraisal to be made of the basic assets and not of the stock of

2058

Wherefore, these objectors pray that the objections hereinbefore taken to the proceedings in the above entitled matter be allowed and sustained and that appropriate orders be made by the above entitled court setting aside and vacating each, every and all of the orders heretofore made in the above entitled proceeding and restor-

2059 ing these objectors to the same status that they occupied before said proceedings were instituted.

BETTIN, PAINTER & WAIT,

By VERNON BETTIN,

Attorneys for Objectors.

State of California, County of Los Angeles—ss.

2060 Vernon Bettin and William George Dickinson, being first duly sworn, depose and say: That they are the objectors in the above entitled matter; that they have read the foregoing Return and know the contents thereof; and that the same is true of their own knowledge, except as to the matters which are therein stated upon their information or belief, and as to those matters that they believe it to be true.

VERNON BETTIN,

WILLIAM GEORGE DICKINSON.

2061 Subscribed and sworn to before me this 20th day of August, 1936.

[Seal]

GERTRUDE R. KLEIN.

Notary Public in and for the County of Los Angeles, State of California.

Endorsed: Filed 10:15 a. m., Aug. 20, 1936.
L. E. Lampton, county clerk; by Paul F. Rau, deputy.

2062 In the Superior Court of the State of California in and for the County of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, v. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404673.

2063 Return and Answer of Harold S. Cook to Orders to Show Cause Dated August 13, 1936, and August 14, 1936, Respectively.

Harold S. Cook, a shareholder of The Pacific Mutual Life Insurance Company of California, for himself, and for and on behalf of all other persons similarly situated who desire to avail themselves of such representation and share the cost thereof, hereby appears in response to the orders to show cause heretofore issued herein on August 13, 1936 and August 14, 1936, respectively, and as cause why the proposed orders therein specified should not be made alleges and specifies the following, to-wit:

I.

Article 14 of Chapter 1 of Part 2 of the Insurance Code of the State of California, in pursuance and under the authority of which the within proceedings purport to have been and to be taken, is void and unconstitutional in that said Article 14 takes and authorizes the taking of property without due process of law in vio-

2065 tion of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

II.

2066 Said Article 14 is further void and unconstitutional in that it impairs and authorizes a public officer of the state and the courts of the state to impair the obligation of contracts in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

III.

2067 Section 1011 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

IV.

Said section 1011 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Consti-

2068 tution of the United States and of section 16 of Article I of the Constitution of the State of California.

V.

Section 1016 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

VI.

2070 Said section 1016 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

VII.

Section 1017 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amend-

2071 ments to the Constitution of the United States
and of section 13 of Article I of the Constitution
of the State of California.

VIII.

Said section 1017 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16
2072 of Article I of the Constitution of the State of California.

IX.

Section 1020 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution
2073 of the State of California.

X.

Said section 1020 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2074

XI.

Section 1021 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

XII.

Said section 1021 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

XIII.

2076

Section 1037 of said Insurance Code, and each separate subdivision or paragraph thereof, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2077

XIV.

Said section 1037, and each separate subdivision and paragraph thereof is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2078

XV.

Section 1043 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2079

XVI.

Said section 1043 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2080

XVII.

Section 1045 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

XVIII.

Said section 1045 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2082

XIX.

Section 1046 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2083

XX.

Said section 1046 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

XXI.

2084

Section 1047 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2085

XXII.

Said section 1047 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2086

XXIII.

Section 1048 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2087

XXIV.

Said section 1048 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2088

XXV.

Section 1049 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2089

XXVI.

Said section 1049 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2090

XXVII.

Section 1050 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2091

XXVIII.

Said section 1050 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

213

38-99



2092

XXIX.

Section 1051 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution

2093 of the State of California.

XXX.

Said section 1051 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2094

XXXI.

Section 1052 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2095

XXXII.

Said section 1052 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

XXXIII.

2096

Section 1053 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2097

XXXIV.

Said section 1053 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

XXXV.

2098

Section 1054 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the

2099 State of California.

XXXVI.

Said Section 1054 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

XXXVII.

2100

Section 1058 of said Insurance Code, in pursuance and under the authority of which the within proceedings, or some of them, purport to have been and to be taken, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2101

XXXVIII.

Said section 1058 is further void and unconstitutional in that it impairs, and authorizes a public officer of the state and the courts of the state to impair, the obligation of contracts, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2102

XXXIX.

The proceedings had and taken by the Insurance Commissioner and by the within court herein are void and unconstitutional in that they deny and have denied due process of law to the shareholders of said The Pacific Mutual Life Insurance Company of California, in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

2103

XL.

Said proceedings hereinabove in paragraph XXXIX referred to are further void and unconstitutional in that they impair and have impaired the obligation of the contracts of said shareholders in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

2104

XL I.

The purported order appointing conservator made and entered herein on July 22, 1936, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law, in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of Section 13 of Article I of the Constitution of the State of California.

XLII.

2105

Said purported order is further void and unconstitutional in that it impairs and authorizes the impairment of the obligation of the contracts of said shareholders, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

XLIII.

2106

The purported order of liquidation made and entered herein on July 22, 1936, is void and unconstitutional in that it takes and authorizes the taking of property without due process of law, in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of Section 13 of Article I of the Constitution of the State of California.

XLIV.

Said purported order of liquidation is further void and unconstitutional in that it impairs and authorizes the impairment of the obligation of

2107 the contracts of said shareholders, in violation of section 10 of Article I of the Constitution of the United States and of Section 16 of Article I of the Constitution of the State of California.

XLV.

2108 The purported order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement of The Pacific Mutual Life Insurance Company of California is void and unconstitutional in that it takes and authorizes the taking of property without due process of law, in violation of section 1 of Article XIV of Amendments to the Constitution of the United States and of Section 13 of Article I of the Constitution of the State of California.

XLVI.

2109 Said purported order hereinbefore in paragraph XLV referred to is further void and unconstitutional in that it impairs and authorizes the impairment of the obligation of the contracts of said shareholders, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

XLVII.

The purported order approving amendment of rehabilitation, sale and transfer of assets and reinsurance agreement made and entered herein on July 23, 1936, is void and unconstitutional in that

2110 it takes and authorizes the taking of property without due process of law, in violation of section I of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State of California.

XLVIII.

2111 Said purported order hereinabove in paragraph XLVII referred to is further void and unconstitutional in that it impairs and authorizes the impairment of the obligation of the contracts of said shareholders, in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

XLIX.

2112 The acts and proceedings of said Insurance Commissioner in proposing, agreeing to, executing and procuring the approval of the purported Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement referred to in the order to show cause herein were and are, and each of them was and is, void and unconstitutional in that they deprive and have deprived the shareholders of said The Pacific Mutual Life Insurance Company of California of their property without due process of law, in violation of section I of Article XIV of Amendments to the Constitution of the United States and of section 13 of Article I of the Constitution of the State

2113 of California; and further in that they impair and have impaired the obligation of the contracts of said shareholders in violation of section 10 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the State of California.

L.

The proceedings had, and taken herein were and are void, irregular, arbitrary and without authority in law, in that:

2114 (a) No notice of any of said proceedings, or of the application for, or the making of, any of the orders hereinabove referred to was given to any of the shareholders of The Pacific Mutual Life Insurance Company of California;

(b) None of said shareholders was given the right or opportunity to appear and be heard in respect of the action taken and/or proposed to be taken by the said Insurance Commissioner and/or by the within court;

2115 (c) None of said shareholders was given the right or opportunity to appear and be heard in respect of the making, execution and/or approval of said purported Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement referred to in the order to show cause herein;

(d) None of said shareholders was given the right or opportunity to secure, attempt to secure, present and/or propose other and different plans or agreements of rehabilitation, reinsurance, sale and transfer of assets or reorganization;

2116 (e) The order approving the Purported Rehabilitation, Sale and Transfer of Assets and Reinsurance referred to in the order to show cause herein, and the order approving Amendment thereto, were and each was made improvidently, without a full or any hearing, without notice or opportunity for hearing to any of the shareholders, and without the presentation and consideration of such independent and impartial appraisals, information and data as would have
2117 enabled the court to form a considered and informed judgment upon the merits of said purported Plan and Agreement;

(f) The said Insurance Commissioner was and is without authority in law to sell, transfer or otherwise dispose of all or substantially all of the assets of said The Pacific Mutual Life Insurance Company of California without the approval and consent of shareholders owning at least a majority of the outstanding capital stock
2118 of said company, and without notice and opportunity for a hearing in respect thereof being given the said shareholders;

(g) The within court was and is^o without power or jurisdiction to order or approve, confirm or ratify the sale, transfer or other disposition of all or substantially all of the assets of said company without notice or opportunity for a hearing in respect thereof having been given the shareholders of said company;

2119 (h) The said Insurance Commissioner was and is without any authority or power in law to make or execute said purported Rehabilitation, sale and Transfer of Assets and Reinsurance Plan and Agreement referred to in the order to show cause herein, and the within court was and is without power or jurisdiction to order or approve, confirm or ratify said plan and agreement;

2120 (i) The said Insurance Commissioner has no right, power or authority in law to use all or any part of the assets of said The Pacific Mutual Life Insurance Company of California to purchase stock in any other corporation, firm or concern;

2121 (j) As the respondent hereby appearing is informed and believes and therefore alleges, said The Pacific Mutual Life Insurance Company of California at the time of any of the proceedings had and taken by said Insurance Commissioner and the within court, was not insolvent or in such condition that its further transaction of business would have been hazardous to its policyholders, or creditors, or to the public; and the finding and determination of said Insurance Commissioner to the contrary were and are arbitrary and capricious and not founded or based on fact;

(k) As respondent hereby appearing is informed and believes and therefore alleges, the

- 2122** finding and determination of said Insurance Commissioner to the effect that he will be unable to restore the business, affairs and property of said The Pacific Mutual Life Insurance Company of California to such a position that it will be able to carry on its business as heretofore, maintain its necessary reserves and discharge in full its obligations to policyholders and others as they mature, that further efforts to proceed under section 1011 of the Insurance Code would be
- 2123** futile and not to the best interests of its policyholders, creditors, stockholders and the public generally, and that the interests of such persons would be best served by granting an order of liquidation, were and are arbitrary and capricious, unfounded in fact and made without any independent or impartial data or information to support them and without any attempt by said Insurance Commissioner to manage, operate or conduct the business and affairs of said company as conservator and without any attempt by such actual operation to determine whether conservation could be effected and liquidation avoided;
- 2124**

(1) The finding of the within court in accordance with the finding and determination of the Insurance Commissioner hereinabove in subdivision (k) referred to, was and is without support in any evidence, data or information before the court;

2125 (m) The finding numbered "1" in the Order Permitting, Approving and Authorizing Rehabilitation, etc., was and is without support in any evidence, data or information before the court and is contrary to the facts;

(n) The finding numbered "2" in said order was and is without support in any evidence, data or information before the court and is contrary to the facts;

2126 (o) The finding numbered "3" in said order was and is without support in any evidence, data or information before the court and is contrary to the facts;

(p) The finding numbered "4" in said order was and is without any support in any evidence, data or information before the court and is contrary to the facts;

2127 (q) The finding contained in the Order Approving Amendment of Rehabilitation, Sale and Transfer of Assets and Reinsurance Agreement is without support in any evidence, data or information before the court and is contrary to the facts;

(r) As the respondent hereby appearing is informed and believes and therefore alleges, the within proceedings are but an incident in and a part of a preconceived plan and design on the part of the directors of said The Pacific Mutual Life Insurance Company of California, acting in concert and collaboration with said Insurance Commissioner, to convey and transfer all of the

2128 assets of said company to a new corporation for the purposes of eliminating the interest therein of the shareholders of the original company, and of defrauding, hindering, and delaying certain creditors and preferring others.

LI.

2129 Said purported Rehabilitation, Sale and Transfer of Assets and Reinsurance Plan and Agreement referred to in the order to show cause herein and the purported amendment thereof, are unfair and inequitable and in violation of the rights of the shareholders, among others, of said The Pacific Mutual Life Insurance Company of California, in the following particulars, among others, and in each of them, to-wit:

2130 (a) All or substantially all of the assets of the said company (hereinafter referred to as the "Old Company") are transferred to the so-called "New Company", but neither non-cancellable policyholders, creditors, nor shareholders participate or are to participate in the realization from any but a small part of said assets;

(b) The New Company does not assume all of the liabilities of the Old Company, but it acquires all of the latter's assets;

(c) The purported agreement for restoration of benefits to non-cancellable policyholders is illusory, unfair and inequitable in that: 1. Such restoration is to be made only at such time or times, and in such manner and to such an extent as may be proposed by the New Company

2131 and approved by the Insurance Commissioner, so that the agreement may never be performed and could never be enforced; 2. The fund out of which said restoration, if any, is to be made is unduly limited to the net profits derived by the New Company from that portion of the non-participating branch of its life department represented by non-participating life insurance policies reinsured and assumed, whereas such policyholders, and thereafter the shareholders, should have
2132 the benefit of all profits made by the New Company from all assets transferred to, and all insurance reinsured and assumed by, the New Company;

(d) The assets of the Old Company are taken over at their admitted values as of December 31, 1935, whereas said assets are in fact of a value considerably in excess thereof by reason of the conservative appraisal of admitted values, and the general appreciation in values since
2133 December 31, 1935. Any realization by reason of such appreciation in excess of admitted values is reserved to the New Company and shareholders do not participate therein or obtain the benefit thereof;

(e) The provision for payments to the Old Company, in which non-cancellable policyholders and thereafter shareholders participate, is unduly limited to payments out of the net profits derived by the New Company from that portion of the non-participating branch of its life insurance

2134 policies reinsured and assumed, whereas such policyholders, and thereafter the shareholders, should have at least the benefit of all profits made by the New Company from all assets transferred to, and all insurance reinsured and assumed by, the New Company;

(f) The limited sources to which payments to be made for the benefit of shareholders are limited, are uncertain in nature and may very probably soon cease to exist because of: 1.

2135 The lapse and discontinuance of non-participating policies reinsured and assumed by the New Company; 2. The conversion of the reinsured and assumed non-participating policies into participating policies; 3. The limitations on the use, and deductions from, the fund so created by virtue of the provisions requiring establishment of reserves for any depreciation in the assets, and the restoration of certain sums to the surplus of the participating department, and the retention by the New Company of the benefit of reserves freed by a lapsation of non-cancellable policies in excess of a lapse rate of ten per cent (10%) per year;

(g) The name, good-will and agency structure of the Old Company are transferred to the New Company, but nothing is paid in respect thereof and there is no provision for participation by the shareholders in the new business acquired or profits made by the New Company as

2137 the result of the acquisition and use of these assets;

(h) The assumption by the New Company of claims against the Old Company is unfairly and unduly limited to aggregate admitted value of the transferred assets as of December 31, 1935, thereby adopting a low value and depriving the shareholders of the benefit of any appreciation in such value;

2138 (i) The agreement by the Insurance Commissioner as to the manner in which he will vote the stock of the New Company in the future in respect of a proposed voluntary mutualization is contrary to public policy and void;

(j) The purchase price to be paid for the stock of the New Company held by the Insurance Commissioner in the event of a voluntary mutualization is not devoted, in proper order, for the benefit of the shareholders of the Old Company; on the contrary, any surplus after payment of claims against the Old Company is to be repaid to the New Company;

2139

(k) The proposed Plan and Agreement is uncertain, vague and ambiguous in many particulars so that its intent and meaning cannot be determined;

(l) The shareholders, who had no part in the negotiation, drafting or preparation of said Plan and Agreement and who are objecting to its terms and provisions, are nevertheless bound, in the event of any dispute, by the decision of one

2140 of the parties, to it and apparently without recourse to the courts;

(m) The provision making the agreement a complete and adequate defense to any action by the shareholders, is unfair, contrary to public policy, and destructive of the right to have disputes and controversies thereunder and rights affected thereby adjudicated by the courts;

(n) The provision for the creation of a fund based on the amount of assumed and reinsured 2141 non-participating insurance in force at the time of creation is illusory and unfair in that there is no limitation on the time within which the fund may be created, and the basis upon which the amount of said fund is to be computed may never exist because of the lapse and discontinuance and maturity of non-participating policies and their conversion into participating policies, either by agreement with individual policyholders or by voluntary mutualization;

2142 (o) The consideration agreed to be paid by the New Company to the Old Company for the latter's assets is grossly inadequate and less than the fair value of said assets.

LII.

The within court is without jurisdiction of the subject-matter of these proceedings.

LIII.

The purported order appointing conservator made and entered herein on August 11, 1936, is void, illegal and without any authority in law for

2143 each, and all of the reasons hereinabove specified in respect of purported order appointing conservator dated July 22, 1936.

LIV.

The orders heretofore made herein on July 22, 1936 and July 23, 1936 now sought to be ratified and approved, were and are, and each of them was and is, further void in that the judge of the within court who made and signed said orders was disqualified in that he was at the time of the
2144 making of said orders the owner and holder of a participating life insurance policy in The Pacific Mutual Life Insurance Company of California, which said fact has been declared in open court.

Wherefore, respondent hereby appearing respectfully prays, on his behalf and on behalf of all persons similarly situated, that all proceedings heretofore had herein be vacated and set aside, that said purported Plan and Agreement be not approved, confirmed or ratified, or that in
2145 the alternative, said Plan and Agreement be amended and modified so as to make it fair and equitable, and for such other and further relief as to the court may seem proper

LOEB, WALKER AND LOEB,

By HERMAN F. SELVIN,

Attorneys for Harold S. Cook.

Verified.

Endorsed: Filed 10:09 a. m., Aug. 20, 1936.

L. E. Lampton, county clerk: Paul F. Rau, deputy.

2146 In the Superior Court of the state of California in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent, Pacific Mutual Life Insurance Company, a corporation, intervenor. No. 404,673.

Response of George I. Cochran, W. H. Davis,

2147 Douglas E. C. Moore and Stanley M. McClung to Petition for Intervention and for Order to Show Cause of Pacific Mutual Life Insurance Company, a Corporation, Intervenor, and Order to Show Cause Issued by Honorable Douglas L. Edmonds in the Above Entitled Matter on July 23, 1936.

Come now George I. Cochran, W. H. Davis, Douglas E. C. Moore and Stanley M. McClung.

2148 and respectfully represent and allege:

I.

That continuously since a long time prior to the year 1920 and prior to the enactment of the law as set forth in sections 1010 to 1061, inclusive, of the Insurance Code of California, each of the undersigned was, and is, the holder of a substantial number of shares of stock in and the holder of a policy of life insurance in respondent corporation.

2149

II.

That continuously throughout the time aforesaid, each of the undersigned has been the holder and owner of a policy of life insurance issued by said respondent, which policy of life insurance has been, throughout said time, and is now, in full force and effect.

III.

2150

That each of the undersigned is one of the persons interested in this proceeding, described and referred to in paragraph V of said petition for intervention.

IV.

That each of the undersigned is now, and has been from a time long prior to July 22, 1936, a director of the respondent corporation.

V.

2151

That on the 22nd day of July, 1936, and for a long time prior thereto, and continuously since said date, A. N. Kemp and Asa V. Call were also directors of said respondent corporation.

VI.

That said A. N. Kemp and Asa V. Call are now, and have been since its incorporation, directors of said intervenor.

VII.

That prior to said 22nd day of July, 1936, said A. N. Kemp, Asa V. Call and other persons whose names are to the undersigned unknown,

2152 in cooperation with said Commissioner, caused to be prepared all, each and every of the applications, petitions and orders referred to in said petition for intervention and the plan and agreement referred to in said petition, together with the form for conveyance from said petitioner to said intervenor referred to in said petition for intervention.

VIII.

2153 That the preparation of each and all of the papers aforesaid was secret and without the knowledge of the undersigned or either of them and, as the undersigned are informed and believe and therefore state the fact to be, without the knowledge of a majority of the directors of said respondent.

IX.

2154 That on said 22nd day of July, 1936, all, each and every of the applications, petitions and orders (except the petition and order dated July 23, 1936), together with said plan and agreement, were practically simultaneously presented and submitted to Honorable Douglas L. Edmonds, judge of the above entitled court, in the above entitled matter, and each, every and all of said orders, except said order dated July 23, 1936, were at said time signed by said Honorable Douglas L. Edmonds, judge as aforesaid.

X.

That said Asa V. Call was, on said 22nd day of July, 1936, and for a long time prior thereto

2155 had been, attorney for said respondent, and at said time was, and on and continuously since said July 22, 1936, has been, and is now, the attorney also for said intervenor.

XI.

That reference is hereby made to the various petitions, applications, plan and agreement referred to in said petition for intervention and on file in the above entitled matter, for further particulars.

2156

XII.

That on said 22nd day of July, 1936, and for a long time prior thereto, said Honorable Douglas L. Edmonds was, and he still is, the holder of a life insurance policy issued by respondent, which policy was throughout all of said times and is in full force and effect, and said Honorable Douglas L. Edmonds was and is one of the persons financially interested in this proceeding and in the affairs of said respondent, described in paragraph V of said petition in intervention and in paragraph III of said order to show cause.

2157

That by reason of his said interest in this proceeding, as aforesaid, said Douglas L. Edmonds was not on said 22nd day of July, 1936, or at any time thereafter, and is not now, qualified to sit or act in the above entitled proceeding, and was and is forbidden by section 170 of the Code of Civil Procedure of the state of California to sit or act therein.

2158

XIII.

That said Honorable Douglas L. Edmonds has heretofore filed in the above entitled proceeding statement and declaration and caused a memorandum thereof to be entered in the minutes of the above entitled court of his interest in said proceeding and in said respondent, as aforesaid.

XIV.

2159

That said Honorable Douglas L. Edmonds is not, and was not at the time of making either or any of the orders referred to in said petition for intervention, qualified to sit or act as judge in the above entitled matter, and that all, each and every of the orders made and signed by him as such judge in the above entitled matter was and is null, void and of no effect.

XV.

2160

Upon such information as was in possession of responding parties, they believe that respondent company was not insolvent nor in such a condition that its further transaction of business would or will be hazardous to its policyholders, creditors, or the public; and upon such information and belief deny the allegations in paragraph IV of said application for order appointing conservator.

XVI.

That, as the undersigned are informed and believe and therefore state the fact to be, an interval of time of only a few moments elapsed

2161 between the making of said order appointing conservator of said respondent insurance company above referred to and the time of the making of said order for liquidation by said Honorable Douglas L. Edmonds, as aforesaid; that nothing was done by said conservator and no business was carried on by him as such prior to the making of said order for liquidation and no investigation was made by said petitioner for the purpose of ascertaining whether efforts to
2162 proceed under and pursuant to said order appointing conservator, as aforesaid, would be futile, and said petitioner, without any such investigation, forthwith applied for said order to liquidate and wind up the business of said respondent insurance company; that no full or other hearing whatsoever was had upon the application of said petitioner for order to liquidate, nor was any policyholder or stockholder of said insurance company notified thereof; on the contrary,
2163 said order was made without any effort by said petitioner to proceed as such conservator pursuant to the provisions of section 1011 of the Insurance Code of the state of California, or otherwise, or to ascertain or determine whether efforts to proceed under said section would be futile.

XVII.

That all insurance policies and business, except so-called non-cancellable contracts of insurance, and all of the property and assets of said

2164 respondent, with certain minor exceptions, have been by said petitioner turned over and delivered to said corporation known as and called "Pacific Mutual Life Insurance Company", and petitioner has thereby rendered himself incapable of carrying out and administering the trusts imposed upon him as Insurance Commissioner of the State of California.

XVIII.

The undersigned respectfully represent and
2165 show that the agreement under and pursaunt to which said assets were turned over and delivered to said Pacific Mutual Life Insurance Company, and the plan of which said agreement was and is a part, are unfair and inequitable, and in their operation have the effect of depriving and will deprive each holder of a life insurance policy issued by said respondent, and each
2166 stockholder of said respondent of property without due process of law, and deny to each such policyholder and each such stockholder the equal protection of the law, in the following particulars:

Said petitioner is, by section 1057 of the Insurance Code of the state of California, "trustee for the benefit of all creditors and all other persons interested in the estate of" said respondent insurance company.

That each and every policyholder is, and all other persons interested as creditors, stockholders

2167 or otherwise in said respondent are, interested and concerned in the integrity and maintenance of its property and assets and the general and equal availability thereof to the payment and satisfaction of all claims against said respondent.

That each and every stockholder of said corporation is interested in the property of said respondent insurance company remaining after the satisfaction of the claims of its creditors and policyholders.

2168

XIX.

That the life insurance policies issued by said respondent, referred to in paragraph V of said petition for intervention, are, as the undersigned are informed and believe and therefore state the fact to be, of the intrinsic value of upwards of fifteen dollars (\$15.00) per thousand dollars (\$1,000.00) of such life insurance, and that the total value of said insurance policies is many millions of dollars;

2169 That no consideration whatever has been paid or is intended to be paid by said intervenor for said insurance policies under and pursuant to the plan and agreement referred to in said petition for intervention, and neither said respondent nor any creditor or stockholder of said respondent will derive any benefit whatever from the value of said insurance policies.

XX.

That in and by said plan and agreement all of the property and assets belonging to said

2170 respondent and all consideration received by said petitioner for said property and assets are, and have been, so disposed of as to render the same and the whole thereof unavailable to either said respondent company or to policyholders, stockholders or any other persons interested therein.

XXI.

2171 That in and by said plan and agreement and the conduct of the petitioner pursuant thereto, all of the assets of respondent have been disposed of at a valuation fixed as of December 1, 1935, which valuation is grossly and materially less than the value of said property and assets on the 22nd day of July, 1936, and does not include any value for the goodwill or agency structure of said respondent insurance company; that said goodwill and agency structure are assets of great value.

XXII.

2172 That by said orders referred to in said petition for intervention and the operation thereof said respondent and all creditors, policyholders, stockholders and other persons interested in said respondent and in the trusts under and pursuant to which said petitioner was acting, have been without notice or hearing or any opportunity for notice or hearing whatever deprived of their property without due or any process of law whatever.

2173

XXIII.

That in and by said orders and the things done by said petitioner thereunder, the contracts of holders of all insurance policies issued by said respondent are modified and impaired without the consent of the parties to said contracts and policies and without any notice or hearing or opportunity to be heard with reference thereto.

XXIV.

2174

That the holders of so-called non-participating policies of insurance issued by respondent have been by said orders and the acts of said petitioner thereunder deprived of access to or the availability of any of the property and assets of said respondent conveyed and delivered by petitioner to said intervenor, and deprived of access to or the availability of any consideration received by said petitioner or agreed to be paid by said intervenor for said property and assets, for the payment or satisfaction of the claim of any such non-cancellable policyholder against said respondent or against said petitioner.

2175

XXV.

That the transfer of property and assets of said respondent to said intervenor by said petitioner includes "cash and securities" deposited "by said respondent with any governmental authority as a condition to the conduct of its business"; that said cash and securities so deposited by respondent includes large sums of money and

2176 securities of great value, amounting in all to several millions of dollars, all of which has been turned over to said intervenor without consideration, and of which the persons for whom said petitioner is trustee and particularly the holders of non-cancellable policies and stockholders of respondent have been deprived by said conveyance, and will continue to be deprived if the latter is maintained in effect.

2177

XXVI.

That under and pursuant to said plan and agreement non-cancellable policyholders and stockholders of respondent will be deprived of all right to the three million dollars paid by petitioner to said intervenor, to the property or any thereof turned over by said petitioner to said intervenor, or to the stock of intervenor delivered to said petitioner.

2178

XXVII.

That said orders and the acts and agreements of petitioner and intervenor responsive and pursuant thereto are inequitable, unfair and confiscatory of the property of policyholders and stockholders of said respondent, and deprive each such stockholder and each such policyholder of his, her or its property without due or any process whatever, and impair the obligations of the re-

2179 spective contracts of each such stockholder and
policyholder, in violation of the Constitution of
the United States and the Constitution of the
2180 state of California, and deny to the holders of
non-cancellable policies issued by said respondent
and stockholders of said respondent the equal
protection of the law.

XXVIII.

2180 These respondents hereby refer to and make
a part hereof, to the same extent as if here set
forth in full, their response filed concurrently
herewith to the order to show cause issued Au-
gust 13, 1936.

Wherefore, these respondents respectfully pray
as follows:

1. For an order cancelling; vacating, setting
aside and holding for naught each, every and
2181 all of the orders made by said Honorable Doug-
las L. Edmonds in this proceeding, and any
and all things done pursuant to said orders and
each thereof;

2. For an order directing and commanding
said intervenor to return to said petitioner said
three million dollars (\$3,000,000) in cash and
to return and reconvey to said petitioner all
property and assets of every kind, character and

2182 description transferred to said intervenor by said
petitioner;

3. For an order directing said petitioner to investigate and report to this court the facts concerning the present value of all assets and property of respondent on July 22, 1936, and the value of all outstanding life insurance policies and business of said respondent, including the goodwill and agency structure of said respondent,
2183 ent, and the amount and present value of all of the deposits of money and/or securities made by said respondent with insurance authorities in the various states and other governments within whose jurisdiction said respondent carried on and transacted life and other insurance business, and as to the availability of said cash and other securities so deposited and as to the availability of said cash and other securities so de-
2184 posited for the benefit of the trusts of which said petitioner is trustee;

4. For an order directing said petitioner to call for propositions and plans to be submitted to this court for protecting all of the holders of policies of insurance of every kind issued by said respondent and all claimants and all creditors and stockholders of said respondent, and all other persons interested in said trust;

2185 5. That the prayer of said petition in intervention be denied;

6. That a hearing be had as to whether the ground for order appointing conservator and restraining order existed or now exists, and that said order appointing conservator and restraining order made July 22, 1936, be discontinued, and that respondent be authorized and directed to resume title and possession of property and
2186 the conduct of its business;

7. For such other and further order as may be meet in the premises and protect the interests of all parties concerned herein.

OSCAR LAWLER,

HAROLD JUDSON,

Attorneys for George I. Cochran, W. H. Davis, Douglas E. C. Moore and Stanley M. McClung.

2187 Verified.

Endorsed: Received copy of the within return this 20 day of Aug., 1936. Webb, Atty. Gen., by Flynn, deputy.

Filed Aug. 20, 1936, 12:19 p. m. L. E. Lamp-ton, county clerk; by R. J. Curtis, deputy.

2188 In the Superior Court of the state of California in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of the State of California, petitioner, vs. The Pacific Mutual Life Insurance Company of California, a corporation, respondent. No. 404,673.

Response of George I. Cochran, W. H. Davis,
Douglas E. C. Moore and Stanley M.
2189 McClung, to Order to Show Cause Issued
in the Above Entitled Matter, on August
13, 1936, Why Order to Liquidate Should
Not Be Made.

Come now George I. Cochran, W. H. Davis,
Douglas E. C. Moore and Stanley M. McClung,
and respectfully represent and allege:

I.

2190 That each of said persons last above named
is now, and at all of the times herein mentioned
has been, the owner of a substantial number of
shares of the capital stock of said respondent
insurance company.

II.

That each of said persons last above named
is now, and at all of the times herein mentioned
has been, the owner and holder of a policy of
life insurance issued by said respondent, which
policy is in full force and effect.

2191

III.

That on or about the 22nd day of July, 1936, there was filed by the above named petitioner application for order appointing conservator of said insurance company; that at the time of the filing of said application, the same was immediately presented to the Honorable Douglas L. Edmonds, judge of the above entitled court, who thereupon made and entered said order appointing conservator, and restraining order;

2192

IV.

That coincident with the filing of said application for and the making of said order appointing conservator and said restraining order, petitioner also filed application for order to liquidate said respondent insurance company, which was also immediately presented to said the Honorable Douglas L. Edmonds, judge of the above entitled court, who thereupon immediately made and entered an order of liquidation of said insurance company;

2193

V.

That at the same time and coincident with the filing of said applications for and the making of said orders appointing conservator and of liquidation above referred to, petitioner also filed and presented to said the Honorable Douglas L. Edmonds, judge thereof, petition for order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan

2194 and agreement relating to the affairs of said insurance company, which application was also forthwith presented to said Honorable Douglas L. Edmonds, judge of said court, who at the same time made and entered an order permitting, approving and authorizing rehabilitation, sale and transfer of assets and said reinsurance plan and said agreement;

V-a.

2195 That on July 23rd, 1936, petitioner presented to said Honorable Douglas L. Edmonds, judge as aforesaid, petition for approval of agreement as modified and amended, and said Honorable Douglas L. Edmonds made an order approving said agreement as modified and amended.

V-b.

2196 That neither said respondent nor any stockholder, policyholder, creditor or other person interested in respondent or its property or assets, or otherwise, was informed, notified, or had any opportunity to be heard or was heard with reference to said agreement as amended.

VI.

That the only persons present before said judge other than the officers of said court and said two witnesses, were the petitioner, the Honorable John L. Flynn, deputy attorney general of the state of California, representing said petitioner, and Asa V. Call, Esquire, the latter stating that he appeared on behalf of respondent;

2197

VI-a.

That said Asa V. Call was, on and prior to said 22nd day of July, 1936, a director and counsel for respondent; that he was not authorized to appear for or to consent on behalf of respondent to the making of said agreement or the order of liquidation or the order of rehabilitation.

VII.

2198

That the presentation of all, each and every of said applications and petitions and the making of said respective orders were coincident; that no notice of the presentation or intention to present any of said applications or petitions was given to either any creditor, policyholder, or stockholder of said insurance company, nor was any "hearing" had with reference to any of said applications or orders.

VIII.

2199

That there were on said 22nd and 23rd days of July, 1936, and at all times prior thereto, and now are, upwards of 2800 stockholders of said The Pacific Mutual Life Insurance Company of California, and there were more than 250,000 policies of insurance issued by said insurance company outstanding and in force, and that the life insurance policies of said insurance company then outstanding and in force were upwards of 200,000 in number and aggregating upwards of \$600,000,000 in amount.

2200

VIII-a.

That continuously since a long time prior to the year 1920 and prior to the enactment of the law as set forth in sections 1010 to 1061, inclusive, of the Insurance Code of California, each of the undersigned was, and continuously since has been a stockholder in, and the holder of a policy of life insurance issued by, said respondent.

IX.

2201

That heretofore and on the 11th day of August, 1936, in the course of the above entitled proceeding, said Honorable Douglas L. Edmonds, judge as aforesaid, made declaration and filed memorandum that he was at the time of the filing of said respective applications and petitions and the making of said orders above referred to, the holder of a life insurance policy issued by said respondent insurance company, which policy was at said times and all thereof in full

2202

force and effect.

X.

That, as the undersigned are informed and believe and therefore state the fact to be, the facts so stated by said Honorable Douglas L. Edmonds in said declaration were and are correct.

XI.

That by reason of the holding of said life insurance policy by said Douglas L. Edmonds, as aforesaid, he was and is interested in said

2203 proceeding and disqualified to sit or act therein
and disqualified and without authority to make
either or any of the orders above referred to,
and, that said orders were and are and each
thereof was and is void and of no effect.

XI-a.

2204 Upon such information as was in possession
of responding parties they believe that respond-
ent company was not insolvent nor in such a
condition that its further transaction of business
would or will be hazardous to its policyholders,
creditors or the public; and upon such informa-
tion and belief deny the allegations in paragraph
II of said application for order to liquidate.

XII.

2205 That, notwithstanding the invalidity and in-
effectiveness of said orders, said petitioner hereto-
fore, and on the 22nd day of July, 1936, acting
pursuant to said order permitting, approving and
authorizing rehabilitation, sale and transfer of
assets and reinsurance plan and agreement above
referred to, caused a corporation to be organized
under the laws of the state of California and
under the name, "Pacific Mutual Life Insurance
Company", had issued to himself all of the stock
thereof, and turned over to said corporation from
the assets of respondent the sum of \$3,000,-
000.00 and all of the remaining property and
assets of said respondent above named, on the
23rd day of July, 1936, and said Pacific Mutual

2206 Life Insurance Company retains possession and control of said money and property.

XIII.

That, as the undersigned are informed and believe, and, therefore, state the fact to be, an interval of time of only a few moments elapsed between the making of said order appointing conservator of said respondent insurance company above referred to and the time of the making of said order for liquidation by said the
2207 Honorable Douglas L. Edmonds, as aforesaid; that nothing was done by said conservator and no business was carried on by him as such prior to the making of said order for liquidation and no investigation was made by said petitioner for the purpose of ascertaining whether efforts to proceed under and pursuant to said order appointing conservator, as aforesaid, would be futile, and said petitioner, without any such investigation, forthwith applied for said order to
2208 liquidate and wind up the business of said respondent insurance company; that no full or other hearing whatsoever was had upon the application of said petitioner for order to liquidate, nor was any policy holder or stockholder of said insurance company notified thereof; on the contrary, said order was made without any effort by said petitioner to proceed as such conservator pursuant to the provisions of section 1011 of the Insurance Code of the State of California, or otherwise, or to ascertain or determine

2209 whether efforts to proceed under said section
would be futile.

XIV.

That all insurance policies and business, except so-called non-cancellable contracts of insurance, and all of the property and assets of said respondent, with certain minor exceptions, have been by said petitioner turned over and delivered to said corporation known as and called "Pacific Mutual Life Insurance Company," and
2210 petitioner has thereby rendered himself incapable of carrying out and administering the trusts imposed upon him as Insurance Commissioner of the State of California.

XV.

The undersigned respectfully represent and show that the agreement under and pursuant to which said assets were turned over and delivered to said Pacific Mutual Life Insurance Company, and the plan of which said agreement was and
2211 is a part, are unfair and inequitable, and in their operation have the effect of depriving and will deprive each holder of a life-insurance policy issued by said respondent, and each stockholder of said respondent of property without due process of law, and deny to each such policy holder and each such stockholder the equal protection of the law, in the following particulars:

Said petitioner is, by section 1057 of the Insurance Code of the state of California, "trustee

2212 for the benefit of all creditors and all other persons interested in the estate of" said respondent insurance company.

That each and every policy holder is, and all other persons interested as creditors, stockholders or otherwise in said respondent are, interested and concerned in the integrity and maintenance of its property and assets and the general and equal availability thereof to the payment and satisfaction of all claims against said respondent.

2213 That each and every stockholder of said corporation is interested in the property of said respondent insurance company remaining after the satisfaction of the claims of its creditors and policy holders.

XVI.

That in and by said so-called rehabilitation plan of said petitioner and said agreement, referred to in the application for an said order to show cause dated August 13, 1936, said petitioner

2214 proposes to organize a new corporation (such a corporation having been already organized as aforesaid) and to turn over to said corporation all of the assets of said respondent insurance company, with certain minor exceptions, (said property having been already turned over to said corporation, intervenor herein) and that said new company shall assume only some of the obligations of said respondent insurance company and the assets of the latter will be available to the

2215 payment and satisfaction of only a part of its creditors and policy holders, to the exclusion of other creditors and policy holders and others interested in said respondent. That said plan and agreement further provide that said new company shall at a later date be mutualized and upon such mutualization said new company shall repurchase its own stock theretofore issued to petitioner, and that the price paid upon such repurchase of said stock shall be used, so far as
2216 necessary, to pay claims against said respondent insurance company, payment of which had theretofore been assumed by said new company, and that so far as the amount of said price is not necessary for the latter purpose, it shall be repaid to said new company.

That said plan and agreement further provide that the life-insurance policies of said respondent insurance company now outstanding shall be assumed and reinsured by said new company;

2217 That said life insurance now outstanding is a valuable asset of said respondent insurance company; that said new company is not required to pay, and has not paid, and does not intend to pay anything therefor, and that policy holders, stockholders and other persons interested and for whom said petitioner is as such conservator, trustee, will thereby be deprived of said value and of any opportunity to participate therein.

- 2218** That as such conservator petitioner became and is trustee for all creditors, policy holders, stockholders and other persons interested in the estate of said respondent; that petitioner has caused to be organized a corporation named Pacific Mutual Life Insurance Company, to which he has turned over and delivered three million dollars (\$3,000,000.00) in cash and substantially all other property and effects belonging to said respondent and has received from said Pacific Mutual Life Insurance Company in purported consideration of said three million dollars and property and effects, ten thousand (10,000) shares of the capital stock of said Pacific Mutual Life Insurance Company of the par value of one hundred dollars (\$100.00) per share, and the assumption by said Pacific Mutual Life Insurance Company of certain claims against said respondent; said petitioner has, however, agreed to sell back to said Pacific Mutual Life Insurance Company said ten thousand shares at a price unstated, to pay with the price so received said claims, payment of which had been assumed by said Pacific Mutual Life Insurance Company as aforesaid, and to return to said Pacific Mutual Life Insurance Company all of said purchase price not required for the payment of such claims; that by means of said transfer of money and assets to said Pacific Mutual Life Insurance Company all policy holders of the respondent company will be deprived of the property and assets so trans-
- 2219**
- 2220**

2221 ferred to said Pacific Mutual Life Insurance Company as aforesaid and to said stock or any avails thereof for the payment of their claims or any of them;

That by said order, and the acts and conduct of said petitioner pursuant thereto, all of the property and assets belonging to said respondent and all consideration received by said petitioner for said property and assets have been so disposed of as to render the same unavailable to 2222 either said respondent company or its policy holders, stockholders or any other persons interested.

That in and by said order and the acts and conduct of said petitioner pursuant thereto all of the assets of respondent have been disposed of at a valuation fixed as of December 1, 1935, which valuation was grossly and materially less than the value of such property and assets on the 22nd day of July, 1936, and did not include 2223 any value for the goodwill or agency structure of said respondent insurance company.

That by said order and the operation thereof said respondent and all creditors, policy holders, stockholders and other persons interested in said respondent and in the trust under and pursuant to which said petitioner was acting have been, without notice or hearing or any opportunity for notice or hearing whatsoever, deprived of their property without due or any process of law whatsoever.

2224 That in and by said order and the things done by said petitioner thereunder the contracts of holders of all insurance policies issued by said respondent are modified and impaired without any notice or hearing or opportunity to be heard with reference thereto.

2225 That the holders of so-called nonparticipating policies of insurance issued by said respondent have been by said order and the acts of said petitioner thereunder deprived of access to or the availability of any of the property and assets delivered by said petitioner to said Pacific Mutual Life Insurance Company and of access to or the availability of any consideration received by said petitioner for said property and assets for the payment or satisfaction of the claim of any such noncancellable policy against said respondent or against said petitioner.

2226 That the transfer of property and assets of said respondent to said Pacific Mutual Life Insurance Company pursuant to said order includes "cash or securities deposited" by said respondent "with any governmental authority as a condition to the conduct of its business," which represent a large sum of money from which the persons interested in said trust and for whom said petitioner is trustee will by said order and the acts

2227 of petitioner thereunder, be deprived of any benefit whatever.

That in and by said order and the operation thereof reinsurance by said Pacific Mutual Life Insurance Company and assumption by it with reference to so-called non-cancellable policies issued by said respondent is limited to certain specified fractional parts of the liability now expressed in said noncancellable policies, and then 2228 only to the extent of a value of the assets and property of said respondent fixed by some unknown person as of December 31, 1935, and the holders of said noncancellable policies will be and are thereby, in common with all policyholders and creditors, deprived of the right to look to the entire property and assets of said respondent for the satisfaction of the claims arising out of their said contracts.

2229 That said order and the acts and agreements of said petitioner responsive and pursuant thereto are inequitable, unfair to and confiscatory of the property of policy holders and stockholders of said respondent and deprive each such stockholder and each such policy holder of his, her or its property without due or any process whatever and impair the obligations of the respective contracts of each such stockholder and policy

2230 holder in violation of the Constitution of the United States and the Constitution of the State of California, and deny to the holders of non-cancellable policies issued by respondent the equal protection of the law.

Wherefore, these respondents respectfully pray as follows:

- 2231 1. For an order cancelling, vacating, setting aside and holding for naught said order of liquidation made by said Honorable Douglas L. Edmonds on the 22nd day of July, 1936, and any and all things done pursuant thereto;
- 2232 2. For an order vacating, cancelling, setting aside and holding for naught the order permitting, approving and authorizing rehabilitation, sale and transfer of assets and reinsurance plan and agreement made by Honorable Douglas L. Edmonds on July 22, 1936, and any and all things done under said order and/or said agreement;
3. For an order vacating, cancelling, setting aside and holding for naught the order approving amendment of rehabilitation, sale and transfer of assets and reinsurance agreement, made by Honorable Douglas L. Edmonds on July 23, 1936;
4. For an order vacating, cancelling, setting aside and holding for naught order permitting

2233 intervention by Pacific Mutual Life Insurance Company and order to show cause made by said Honorable Douglas L. Edmonds July 23, 1936;

5. For an order directing and commanding said Pacific Mutual Life Insurance Company to return to said petitioner said \$3,000,000.00 in cash, and to reconvey to said petitioner all property and assets of every kind, character and description transferred to said Pacific Mutual Life
2234 Insurance Company by said petitioner;

6. For an order directing said petitioner to investigate and report to this court the facts concerning the present value of all assets and property of respondent on July 22, 1936, and of the outstanding life-insurance policies in force of said respondent and of the prospects of a sale of all or any part of said property and policies; directing said petitioner to investigate and report
2235 to the court the amount and present value of all deposits of money and/or securities made by said respondent with the insurance authorities in the various states and other governments within whose jurisdiction said respondent was carrying on and transacting a life and other insurance business and as to the availability of said cash and other securities for the benefit of the trust of which said petitioner is trustee;

2236 . 7. For an order directing said petitioner to call for propositions and plans for protecting all of the holders of policies of insurance of every kind issued by and of the rights of all other persons interested in said respondent;

8. That the prayer of the petition filed herein by said Pacific Mutual Life Insurance Company, intervenor, on July 23, 1936, be denied;

9. That a hearing be had as to whether the grounds for the order appointing conservator and 2237 restraining order existed or now exist and that said order appointing conservator and restraining order made July 22, 1936, be discontinued and that respondent be authorized and directed to resume title and possession of its property and the conduct of its business.

10. For such other and further order as may protect the interests of all parties concerned herein.

2238 OSCAR LAWLER & HAROLD JUDSON,
*Attorneys for George I. Cochran, W. H. Davis,
Douglas E. C. Moore, and Stanley M.
McClung.*

Verified.

Endorsed: Received copy of the within return this 20 day of Aug., 1936. Webb, Atty. Gen. By Flynn.

Filed Aug. 20, 1936, 12:19 p. m. L. E. Lampton, county clerk; by R. J. Curtis, deputy.

2239 In the Superior Court of the State of California in and for the County of Los Angeles.

Harold S. Cook, for himself and on behalf of all persons similarly situated, plaintiff, vs. Samuel L. Carpenter, Jr., as Insurance Commissioner of the state of California, and as Conservator and Liquidator of The Pacific Mutual Life Insurance Company of California, The Pacific Mutual Life Insurance Company of California, a corporation, and Pacific Mutual Life Insurance
2240 Company, a corporation, defendants. No.

Complaint

(To vacate and set aside proceedings and orders in conservation and liquidation).

Plaintiff above-named, for himself and for and on behalf of all other persons similarly situated, complains of the above-named defendants as follows:

I.

2241 At all times herein mentioned Samuel L. Carpenter, Jr., has been and now is the duly appointed, qualified and acting Insurance Commissioner of the state of California. Said defendant is hereinafter sometimes referred to as the "Commissioner."

II.

At all times herein mentioned The Pacific Mutual Life Insurance Company of California has been and now is a corporation organized and

2242 existing under and by virtue of the laws of the state of California, and at all said times to July 22, 1936, said corporation has been actively engaged in the life, health and accident insurance and annuity business in the state of California and elsewhere throughout the United States. Said corporation is hereinafter sometimes referred to as the "Old Company."

III.

At all times herein mentioned since about **2243** July 22, 1936, Pacific Mutual Life Insurance Company has been and now is a corporation organized and existing under and by virtue of the laws of the state of California. Said corporation is hereinafter sometimes referred to as the "New Company."

IV.

At all times herein mentioned plaintiff Harold S. Cook has been and now is a shareholder of the Old Company, being the owner during all **2244** that time of not less than four hundred six (406) shares of the capital stock of said corporation.

V.

On or about August 3, 1936, plaintiff and Allan C. Balch, Ferdinand R. Bain, Shannon Crandall and H. H. Wagenseller associated themselves together as a Protective Committee of the Stockholders of The Pacific Mutual Life Insurance Company of California for the purpose of acting and appearing for and on behalf,

2245 and representing the interests, of such shareholders of such Old Company as desired to avail themselves of such representation in connection with the proceedings in respect of the liquidation of said company hereinafter referred to. Thereafter numerous shareholders of said Old Company authorized, and numerous other shareholders are from time to time authorizing, said persons to act as their attorney-in-fact to take such steps as they might deem advisable to investigate the so-called rehabilitation, sale and transfer of assets and reinsurance agreement, referred to in said proceedings, and to protect their interests as shareholders of said Old Company, and in that connection to take such proceedings in court or otherwise, either in the name of said shareholders or in the name of others, as said committee might deem advisable. A true and correct copy of the form of written authorization which has been and is being executed by said shareholders is attached hereto, marked "Exhibit A" and by this reference made a part hereof as though fully set forth. In this connection plaintiff alleges that at noon on August 10, 1936, shareholders owning approximately fifty thousand (50,000) shares of the capital stock of said Old Company had authorized said committee to act for them in accordance with the terms of said Exhibit A.

VI.

2248

2249

By reason of the facts hereinabove alleged plaintiff appears herein for himself and for and on behalf of all of the shareholders hereinabove in paragraph V referred to and for and on behalf of all other shareholders of said Old Company who may hereafter authorize him and/or said Protective Committee to act for them. In this connection plaintiff alleges further that the number of said shareholders is large and that it would be and is impracticable to bring them all before the court but that the questions herein involved are common to all of them. For that reason plaintiff sues and appears herein for the benefit, and for and on behalf, of all of said shareholders and of all other shareholders who may desire to avail themselves of such representation and agree to share the expense thereof.

VII.

2250

On or about July 22, 1936, the Commissioner, acting or purporting to act in his official capacity, filed in the within court an application for an order of said court appointing him Conservator of said Old Company and thereafter, on the same day, an order of said court was made and entered under and by virtue of the terms of which said Commissioner was appointed Conservator of said Old Company and of its business, assets and affairs, and said Commissioner was ordered to take possession forthwith of all the books, records, property and assets of said Old Com-

2251 pany and as Conservator to conduct its business
for the benefit of its policyholders, creditors and
stockholders and of the public in general. The
proceedings in which the foregoing order was
made, and in which the various orders, applic-
tions and petitions hereinafter referred to were
made, are entitled, "Samuel L. Carpenter, Jr.,
Insurance Commissioner of the State of Cali-
fornia, Petitioner, vs. The Pacific Mutual Life
Insurance Company of California, Respondent,"
2252 and are numbered 404673 in the records of this
court.

VIII.

On July 22, 1936, and concurrently with the
filing of the application for appointment of Con-
servator hereinabove in paragraph VII referred
to, said Commissioner filed in the within court
an application for an order to liquidate said
Old Company, and thereafter and on the same
day an order of said court was made and en-
2253 tered under and by virtue of the terms of which
said Commissioner was appointed Liquidator of
the assets and business of said Old Company,
all of the right, title and interest of said Old
Company in and to its assets and property was
vested and confirmed in said Commissioner as
Liquidator, and said Commissioner as Liquida-
tor was ordered to conduct, manage and operate
the business of said Old Company, to wind up
and liquidate its business, and to formulate,
prepare and submit forthwith if possible for the

- 2254 approval of said court a plan and agreement of reinsurance and rehabilitation or sale and transfer of assets.

IX.

- On July 22, 1936, and concurrently with the filing of the applications hereinabove in paragraphs VII and VIII referred to, said Commissioner filed in the within court a petition for an order permitting, approving and authorizing rehabilitation, sale and transfer of assets and
- 2255 reinsurance plan and agreement of said Old Company and thereafter, and on the same day, an order of said court was made and entered approving said proposed plan and agreement, ordering said Commissioner forthwith to organize a new corporation and to subscribe to its capital stock by the use of funds and assets under his control as Liquidator of said Old Company, authorizing him forthwith to execute an agreement in form substantially as set forth in said
- 2256 plan, ordering said Commissioner forthwith to transfer and set over to said New Company all of the assets of the Old Company, except the stock of said New Company and except any claims which the Old Company might have against any of its present or past officers, directors or employees or against any other person by reason of wrongful or illegal acts or omissions of any of such past or present officers, directors or employees, authorizing and ordering said Commissioner to do any and all things necessary, desira-

37 ble or proper to carry out the terms of said plan and agreement, and directing the officers, directors, agents and employees of the Old Company to co-operate with and assist said Commissioner and the New Company in the effectuation of said plan by the execution of such documents and the doing of such acts in connection therewith as might be requested of them by said Commissioner. A copy of said plan and agreement is attached to the petition for approval thereof 58 on file in said proceedings and by this reference the same is incorporated in this complaint as though fully set forth.

X.

On July 23, 1936, said Commissioner filed in the within court a petition for approval of an amendment to said plan and agreement and thereafter on the same day said court made and entered its order approving said amendment. A copy of said amendment is attached to said 59 petition for an order approving the same on file in said proceedings, and by this reference it is incorporated herein as though fully set forth.

XI.

Immediately upon the making of the orders hereinabove referred to said Commissioner and the New Company executed said plan and agreement and thereupon all of the assets of the Old Company, with the exceptions hereinabove referred to, were transferred and conveyed to the

- 2260 New Company and ever since that time said New Company has been and now is in the sole and exclusive possession thereof and said company has been and now is conducting the insurance and annuity business heretofore conducted by the Old Company. Under and by virtue of the terms of said plan and agreement said Commissioner sold, granted, bargained, assigned, conveyed, transferred, set over and delivered to the New Company all the assets of the Old
- 2261 Company excepting only the stock and claims hereinabove in paragraph IX referred to, and said New Company agreed to assume and reinsure the liability of the Old Company under all policies and contracts of insurance outstanding and in force on July 22, 1936, excepting, however, that such assumption and reinsurance in respect of the non-cancellable, health and accident disability insurance policies theretofore issued by the Old Company were limited to certain specified portions, ranging from twenty per
- 2262 cent (20%) to ninety per cent (90%), of the Old Company's liability on or under said non-cancellable policies, and said New Company agreed, at such time or times and in such manner and to such an extent as it and the Commissioner might select, to restore full benefits under said non-cancellable policies but only to the extent of the New Company's net profits derived from a limited portion of the business of the Old Company taken over by it, to-wit: the net

2263 profits derived by the New Company from that portion of the business of its accident and health department represented by accident and health policies reinsured under said agreement and the net profits derived by the New Company from that portion of the business of the non-participating branch of its life department represented by non-participating life insurance policies reinsured under said agreement; and said New Company further agreed for a period of ten (10) 2264 years commencing January 1, 1937, to pay to the Commissioner its net profits derived from the foregoing sources after deductions for the restoration of benefits hereinabove referred to and after various reserves considerably in excess of one million seven hundred ninety thousand dollars (\$1,790,000.00) should have been established for the benefit of the New Company, and said New Company further agreed at the end of said ten-year period either to create a 2265 fund of ten dollars (\$10.00) per one thousand dollars (\$1,000.00) of reinsured non-participating life insurance then in force, or to pay interest at the rate of six per cent (6%) per annum on an amount equal to such fund until it should have been created, to be applied first, to the restoration of benefits and establishment of reserves hereinabove referred to, second, to the payment of claims against the Commissioner, and third, to distribution pro rata to the shareholders of the Old Company. Except as herein-

2266 above expressly alleged, no payments are or are agreed to be made to, or for the benefit of the shareholders of the Old Company. In this connection plaintiff is informed and believes that the greater part of the earnings and profits of the Old Company were derived, and those of the New Company will be derived, from sources other than those allocated as aforesaid to the making of said payments.

● XII.

2267 Plaintiff is informed and believes and therefore alleges that all of the orders hereinabove in paragraphs VII, VIII and IX referred to were made concurrently and contemporaneously and without the lapse of any time other than the time required for the signing thereof; that no hearing or other proceeding in connection therewith was had by or before the within court and that no evidence in connection therewith was presented to or heard by said court other than

2268 the allegations of the various applications and petitions hereinabove referred to. Plaintiff is further informed and believes and therefore alleges that at no time prior to or concurrently with the making of said orders, or prior to or concurrently with the making of the order hereinabove in paragraph X referred to, was there presented to the within court, nor did the court have, any impartial or independent appraisals, data or information upon which to base a con-

2269 sideration and determination of the fairness, equity and legality of the proceedings herein taken and/or of said plan and agreement.

XIII.

At no time prior to or concurrently with the making of any of said orders was any notice thereof or of the proceedings for the procurement thereof given to any shareholder of the Old Company nor was any such shareholder ever given any right or opportunity to appear and be
2270 heard in or in connection with said proceedings and/or the making of said orders, or any of them. The consent of the shareholders of the Old Company to said proceedings has never been requested or obtained nor has the consent of said shareholders or any of them to the aforesaid transfer and conveyance of assets ever been requested or obtained. In this connection plaintiff alleges that the assets so transferred and conveyed to the New Company were and are
2271 substantially all of the assets of the Old Company and were all of the assets of said Old Company which at that time were being or theretofore had been used in the conduct and operation of the business of said Old Company.

XIV.

Plaintiff is informed and believes and therefore alleges that at some time prior to July 22, 1936, the exact date being unknown to him, the directors of the Old Company, or some of them,

2272 acting in concert and collaboration with said Commissioner, formed a plan or design to eliminate the interests of the shareholders of the Old Company in its assets and business, to create a new corporation which would take over and conduct and operate the assets and business of the Old Company and thereby to hinder, delay and defraud certain of the policyholders and creditors of said Old Company of their claims, whereas other policyholders and creditors of said Old

2273 Company would be preferred in the collection and satisfaction of their claims; and agreed that in order to accomplish said plan and design proceedings substantially such as those which have been hereinabove alleged should be taken for the purpose of accomplishing said transfer of assets, delay and hindrance of some creditors and preference of others, and elimination of the interests of the shareholders of the Old Company. Plaintiff is further informed and believes and

2274 therefore alleges that the proceedings had and taken as aforesaid were and are but incidents in and a part of said preconceived plan and design.

XV.

Plaintiff is informed and believes and therefore alleges that the various findings and determinations of said Commissioner as to the condition of the Old Company and the necessity for taking the various proceedings hereinabove alleged to have been taken were arbitrary and capricious

2275 and not supported by the facts in that said Old Company was not at any of the times said proceedings were taken insolvent or in such condition that its further transaction of business would have been hazardous to its policyholders or creditors or to the public. Plaintiff is further informed and believes and therefore alleges that the finding and determination of said Commissioner that further efforts to proceed under section 1011 of the Insurance Code would
2276 be futile and not to the best interests of its policyholders, creditors, stockholders and the public generally and that the interests of such persons would be best served by granting an order of liquidation, were and are arbitrary and capricious, unfounded in fact, and made without any independent and impartial data or information to support and without any attempt by said Commissioner to manage; operate or conduct the business and affairs of said Old
2277 Company as Conservator and without any attempt on his part by such actual operation to determine whether conservation could be affected and liquidation avoided.

XVI.

Plaintiff further alleges that said purported rehabilitation, sale and transfer of assets and reinsurance plan and agreement was and is unfair and inequitable and in violation and disregard of the rights of the shareholders of said Old Company in that said plan does not pre-

- 2278 serve to said shareholders the full benefit of their interest in the assets and business of said Old Company remaining after the just claims of all policyholders and creditors have been paid and satisfied, but on the contrary transfers and reserves for the benefit of said New Company substantially all of the interest remaining in the assets and business of the Old Company after allowance for the claims of policyholders and creditors; and further in that the consideration
- 2279 agreed to be paid by the New Company for the Old Company's assets and business is grossly inadequate and substantially less than the fair value of said assets. Said plan and agreement is further unfair and inequitable and in violation and disregard of the rights of the shareholders of said Old Company in that, as plaintiff is informed and believes and therefore alleges, no attempts were made prior to the consummation of said plan and agreement to obtain any offers
- 2280 from others for the purchase of said assets and business or reinsurance of the policyholders of the Old Company or rehabilitation of the Old Company.

XVII.

By reason of the foregoing facts and proceedings had and taken, and the orders made and entered herein, are and each of them is void, irregular, arbitrary and without authority in law, and said proceedings and orders are and each of them is void and unconstitutional in

2281 that they deprive and have deprived the share-
holders of said Old Company of their property
without due process of law in violation of section
1 of Article XIV of Amendments to the Con-
stitution of the United States and of section 13
of Article I of the Constitution of the state of
California, and further in that they impair and
have impaired the obligation of the contracts of
said shareholders in violation of section 10 of
Article I of the Constitution of the United
2282 States and of section 16 of Article I of the Con-
stitution of the state of California.

XVIII.

Further by reason of the foregoing facts plain-
tiff alleges that the statute under and in pursu-
ance of which the said proceedings and orders
purport to have been taken and made, being Ar-
ticle 14 of Chapter 1 of Part 2 of the Insur-
ance Code of the state of California, is void
and unconstitutional in so far as it authorizes
2283 and permits such proceedings and orders, in that
it deprives plaintiff and the persons on whose
behalf he sues of their property without due
process of law, in violation of section 1 of Article
XIV of Amendments to the Constitution of the
United States and of section 13 of Article I of
the Constitution of the state of California, and
further in that it impairs and authorizes the im-
pairment of the obligation of the contracts of
said persons and parties in violation of section 10

2284 of Article I of the Constitution of the United States and of section 16 of Article I of the Constitution of the state of California.

XIX.

2285 Plaintiff, and the persons on whose behalf he sues, have been and will be irreparably injured by said proceedings and orders in that, by the consummation and enforcement of the plan and agreement approved and permitted thereby, their entire interest as shareholders in and to the business and assets of the Old Company has been and will be destroyed. Plaintiff and the persons on whose behalf he sues have no adequate remedy at law or in the proceedings herein referred to in that, as plaintiff is informed and believes and therefore alleges, any intervention in said proceedings may be subordinated, as a matter of law, to the proceedings had and orders made prior to such intervention.

2286 Wherefore, plaintiff, for himself and for and on behalf of all other persons similarly situated, prays for a judgment and decree vacating, setting aside and annulling all proceedings had and taken and all orders heretofore made in said action No. 404673, for plaintiff's costs incurred herein, including a reasonable attorneys' fee, and for such other and further relief as to the court may seem proper.

LOEB, WALKER AND LOEB,

By.....,

Attorneys for Plaintiff.

EXHIBIT A.

Protective Committee of Stockholders of
The Pacific Mutual Life Insurance Company of
California,

Room 717 I. N. Van Nuys Building,
210 West Seventh Street,
Los Angeles, California.

Gentlemen:

I am the owner of.....shares of
stock of The Pacific Mutual Life Insurance
Company of California.

In response to your letter dated August 3,
1936, signed by Messrs. Allan C. Balch, Fer-
dinand R. Bain, Harold S. Cook, Shannon Cran-
dall and H. H. Wagenseller as a Protective Com-
mittee of the Stockholders of The Pacific Mu-
tual Life Insurance Company of California,
hereinafter referred to as the "old company", I
hereby designate and appoint as my attorney-in-
fact the said committee as it now is or from time
to time may be constituted, to take such steps
as it may deem advisable to investigate the so-
called "Rehabilitation, Sale and Transfer of As-
sets and Reinsurance Agreement" with Pacific
Mutual Life Insurance Company, hereinafter re-
ferred to as the "new company", and to protect
my interests as a stockholder of the old company.

2290 Without limiting the effect of the foregoing general language, I hereby authorize my said attorney-in-fact to employ legal counsel and such other persons as in its judgment may be necessary, to conduct negotiations in my behalf and to protect my said interests by proceedings in court or otherwise, either in my name or in its name or in the name of others, all in such manner as the committee, in the exercise of its discretion, may deem advisable, but the committee shall not, for me, approve any agreement for the rehabilitation and/or liquidation of the old company or any agreement for the sale and transfer of its assets or any agreement for the mutualization of the old company or of the new company or any agreement of reinsurance, without my prior approval.

2292 I agree that the committee shall consist of the persons named above and of such other persons as they may select to act with them either in addition to or to replace any such persons, that the committee will formulate its own rules of procedure and rules for the addition, removal and/or substitution of its members, and that the members of the committee will serve without compensation. I understand that the committee will act for other stockholders of the old com-

2293 pany as well as for myself and since it will act without compensation I agree that it will have no liability to me except in the event of its own gross negligence.

I further agree to pay a pro rata proportion of the expenses incurred by the committee based upon the number of shares owned by me in relation to the whole number of shares of stock represented by the committee under similar powers of attorney, but subject to the express limitation that in no event, except with my express written consent, shall the expense to me, including attorneys' fees, exceed ten (10) cents for each share of stock owned by me.

Dated at _____, _____, 1936.

(Signature of Stockholder)

Please Print Name and Address Below.

2295 _____
Address: _____

(Street and Number)

(City) (State)

Telephone Number: _____

Verified.

Endorsed: Filed Aug. 24, 1936 at 10:30 a. m.
L. E. Lampton, county clerk; by A. G. Stanham,
deputy.

MICROCARD

TRADE MARK 

22



MICROCARD[®]
EDITIONS, INC.

PUBLISHER OF ORIGINAL AND REPRINT MATERIALS ON MICROCARD AND MICROFICHES
901 TWENTY-SIXTH STREET, N.W., WASHINGTON, D.C. 20037, PHONE (202) 333-6393

213

38-99



2206 In the Superior Court of the state of California in and for the county of Los Angeles.

Samuel L. Carpenter, Jr., Insurance Commissioner of California, petitioner, v. Pacific Mutual Life Insurance Company of California, a corporation, respondent.

Edwin Janss, Harold Janss, Gordon B. Kaufmann, Andrew Blackmore, Clifton B. Herd, Fred H. Oliver, intervenors. No. 404-673.

2207 **Complaint in Intervention.**

Intervenors above named, on their own behalf and on behalf of other persons similarly situated, by leave of court first obtained, file this, their cause in intervention, and allege as follows, to-wit:

I.

2208 That at all times herein mentioned your intervenors herein have had and now have an interest in the above entitled cause by reason of their several ownership of policies of insurance heretofore issued to each of them by Pacific Mutual Life Insurance Company of California, a corporation.

II.

That at all times herein mentioned the Pacific Mutual Life Insurance Company of California was and is a corporation duly organized and existing under the laws of the state of California.

220 and has had and still has its principal place of business in the city of Los Angeles, county of Los Angeles, state of California.

III.

That at all times herein mentioned Pacific Mutual Life Insurance Company was and now is a corporation incorporated under the laws of the state of California, with its principal place of business in the city of Los Angeles, county of Los Angeles, state of California.

2300

IV.

That Samuel L. Carpenter, Jr., is the duly appointed, qualified and acting Insurance Commissioner of the State of California.

V.

That on or about the 22d day of July, 1936, the Insurance Commissioner of the State of California filed in this court an application for an order appointing him conservator of the Pacific Mutual Life Insurance Company of California, a corporation, which order was duly made and entered, under and by virtue of the terms of which said petitioner was appointed conservator of said Pacific Mutual Life Insurance Company of California, a corporation, and of its business assets and affairs, and said Insurance Commissioner was ordered to take possession forthwith of all books, records, property and assets of the said company, and as conservator to conduct its business for the benefit of its policy holders,

2301

2302 creditors and stockholders, and of the public in
general.

VI.

That on or about July 22, 1936, the above entitled court, upon the application of the said Insurance Commissioner of the State of California, this court made certain orders affecting the Pacific Mutual Life Insurance Company of California, a corporation, its books, records, property, policy holders, creditors and stockholders, and the public in general, and granted to the said Insurance Commissioner of the State of California certain powers and prescribed certain duties in connection therewith. That on or about the said 22d day of July, 1936, certain plans for the rehabilitation of the Pacific Mutual Life Insurance Company of California, a corporation, were approved by this court, and the Insurance Commissioner was authorized to organize a new company designated Pacific Mutual Life Insurance Company, a corporation, under and by virtue of which the assets, with certain exceptions, of Pacific Mutual Life Insurance Company of California, a corporation, were conveyed and transferred to Pacific Mutual Life Insurance Company, a corporation. That the details of the said transactions are con-

2305 tained in the pleadings of petitioner and respondent in the above matter, and are made a part hereof by reference as though set forth in full and verbatim.

VIII.

2306 That by complaints in intervention, and otherwise, it appears that other persons have heretofore complained and alleged that the acts of the Insurance Commissioner of the State of California, with respect to rehabilitation and sale and transfer of assets and reinsurance plans and agreements, were and are unfair and inimical to the best interests of such intervenors, and likewise inimical and unfair to the policy holders, shareholders and creditors of Pacific Mutual Life Insurance Company of California, a corporation.

IX.

2307 Your present intervenors allege that the formation and preparation of a rehabilitation and reinsurance plan and agreement as affecting Pacific Mutual Life Insurance Company of California, a corporation, and its successor in interest, the instrumentality of the Insurance Commissioner, as conservator, in accomplishing a plan of rehabilitation appear essentially and in substance to be equitable and fair, considering

2308 all of the problems involved, and having in mind
the best interests of all persons concerned.

X.

These present intervenors further allege that while it, probably is true that the plan of rehabilitation and reinsurance heretofore submitted by the Insurance Commissioner of the State of California, and which is now the subject matter of an order to show cause pending before this Honorable Court, can in some respects be altered and modified so as to settle and determine questions not as yet settled and determined in the plan thus far submitted, and while it may be true that in some respects the "plan" can be altered and modified in particulars which will enhance its fairness and equitability to all persons concerned, these present intervenors nevertheless believe that in the main the plan is a good one, intelligently and honestly conceived and formulated for the purpose of accomplishing the greatest good for the greatest number of persons concerned and the public at large. These present intervenors further take the position that the acts and things heretofore accomplished by the Insurance Commissioner of the State of California, as such Commissioner and conservator of Pacific Mutual Life Insurance Company of Cali-

2309

2310

311 fornia, a corporation, and the acts and things done by the above entitled court with respect of the appointment of said Insurance Commissioner as conservator and in connection thereafter with his acts as such conservator, were lawful and constitutional, and that the statutory provisions authorizing and governing all such acts of this court, and the conservator, were and are constitutional.

XI.

312 That the rehabilitation plan and reinsurance agreement hereinabove referred to is at present on file in the records of this court in this action, and is made a part hereof by reference as though set forth in full and verbatim.

Wherefore, these present intervenors pray that the rehabilitation and reinsurance plan and agreement submitted by the Insurance Commissioner of the State of California be authorized and approved by this court, and be modified and amended to the extent and within such limits as will more effectually accomplish the following purposes:

313 (a) The preservation of the value of the assets of the estate for the benefit of its creditors and policy holders;

(b) The protection, as far as possible, of all of the existing legal rights of all interested parties in the assets of Pacific Mutual Life Insur-

2314 ance Company of California, a corporation, and its instrumentalities and successors in interest;

(c) The protection of the right of policy holders to maintain, in so far as may be possible, the continuity of their insurance policies;

(d) The protection and enablement of the established business created by Pacific Mutual Life Insurance Company of California, a corporation, to be maintained as a going concern;

2315 (e) The attainment of solvency of the corporation in which policies may be insured by avoiding the primary cause of alleged insolvency or the protection against insolvency of the corporation in which policies may be reinsured by avoiding such primary cause of alleged insolvency, namely, the writing of non-cancellable, disability and life policies on such a basis that the losses and required reserves cannot be paid or maintained;

2316 (f) For such other and further relief as to the court may seem just and meet in the premises.

WM. M. RAINS,

Attorneys for Above Named Intervenors.

Verified.

Endorsed: Received copy of the within complaint this 20th day of August, 1936. _____,
attorney for _____

Filed Aug. 24, 1936, 3:40 p. m. L. E. Lamp-ton, county clerk; by J. MacGregor, deputy.

